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# BORDER VIOLENCE

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## HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL LAW,  
IMMIGRATION, AND REFUGEES

OF THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

**H.R. 2119**

IMMIGRATION ENFORCEMENT REVIEW COMMISSION ACT

SEPTEMBER 29, 1993

Serial No. 14

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ISBN 0-16-043567-6



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## **BORDER VIOLENCE**

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**WEDNESDAY, SEPTEMBER 29, 1993**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL LAW,  
IMMIGRATION, AND REFUGEES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The subcommittee met, pursuant to notice at 9:36 a.m., in room 2237, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Romano L. Mazzoli, George E. Sangmeister, Jerrold Nadler, Xavier Becerra, Bill McCollum, Lamar S. Smith, Elton Gallegly, and Charles T. Canady.

Also present: Eugene Pugliese, counsel; Katherine Urban, research assistant; Judy Knott, secretary; and Peter Levinson, minority counsel.

Mr. MAZZOLI. The subcommittee will come to order.

Mr. SMITH. Mr. Chairman, I move that, pursuant to rule 5 of the committee rules of procedure, the subcommittee allow this hearing to be covered in whole or in part by television broadcast, radio broadcast, and still photography.

Mr. MAZZOLI. Without objection, the motion is agreed to. I thank my friend from Texas.

### **OPENING STATEMENT OF CHAIRMAN MAZZOLI**

I have a short opening statement and will yield to any of my colleagues. I think by that time our friend from California, whose bill is up today, will be here with us for his statement.

Today we have a hearing on H.R. 2119, which would seek to establish an independent review commission to investigate complaints of civil rights abuses. That bill, H.R. 2119, was introduced by our friend, Xavier Becerra of California. In addition, we will also hear testimony on a broader range of activities in the Immigration Service and in the Border Patrol.

I don't think any one of us is comfortable with the idea of violence at the border, nor do we condone any activities of so-called rogue agents. On the other hand, it has been my experience—and I have had the honor of working with this subcommittee for well over 10 years—that the work done by the men and women of the Border Patrol and of the Immigration Service and of the Customs Service generally has been in the highest traditions of public service, handling very dangerous, delicate and difficult assignments with professionalism, courage, and efficiency.

The individual who goes beyond the norm and who exceeds the guideline is the individual whom the agencies and departments themselves have established guidelines to target, and to eventually eliminate from the service, if their conduct is that reprehensible.

So there are on the books both of the Customs Service and of the Immigration Service and Border Patrol established programs and procedures and policies which guide the sanctioning and, to some extent, punishment, and eventually expulsion, and perhaps even imprisonment of people who have gone beyond those norms.

The gentleman from California's bill, which is an interesting bill certainly and one which responds to some of the problems which all of us see in the newspapers, is one which I think has to be gauged not just in itself but against the backdrop of agencies of government which already have procedures. I think the situation is, at least in my mind, that if the procedures are working or will work once fully implemented, and if these agents who go beyond the standards are identified and acted against and expelled and imprisoned in those instances where their conduct is criminal behavior, then there may not be a need for this bill.

So, with that, I am looking forward to the hearing because it will present not just information on H.R. 2119 but on a broader range of issues which this subcommittee will wrestle with in the weeks and months ahead.

The gentleman from Florida.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

I am looking forward, as you are, to welcoming our witnesses today to this hearing about H.R. 2119—and the general oversight we are going to have on the Border Patrol. Those of us who serve on this subcommittee are acutely aware of the many difficulties an understaffed Border Patrol faces in trying to deal every day with surreptitious entries across our southern border.

A number of my colleagues and I want to provide the Border Patrol with the personnel and equipment needed to apprehend a much higher percentage of the undocumented aliens who flaunt our immigration laws. The expenses associated with greater law enforcement efforts at the border are far less than the costs of finding, apprehending, and deporting undocumented aliens who reach the interior of the United States, and far less than the cost to those who are being deprived—in the economic sector of our country—of their livelihoods because we have a large number of undocumented aliens here.

A strengthened Border Patrol is not the only answer to the undocumented alien problem, but it is an indispensable ingredient of any serious attempt to achieve compliance with our immigration law.

Border Patrol agents face major dangers every day as they confront the smugglers who traffic in human beings and in illicit drugs. The Border Patrol's primary role in drug interdiction between ports of entry carries with it substantial personal risk. The use of necessary force is an unavoidable aspect of a Border Patrol agent's job. Abuses of Border Patrol authority can never be condoned, but in fairness to a dedicated force that generally functions at a high level of professionalism, incidents of misconduct must be



seen in perspective. Misconduct is the exception rather than the rule.

We need to investigate and respond to allegations of abuse without preventing the Border Patrol from carrying out its essential functions. The most important tools for preventing abuses are the screening that accompanies recruitment, the education and training of agents, and the development of appropriate policies relating to the use of force.

This hearing affords us an opportunity to learn about INS's efforts in that regard, and, to that end and to the end of general oversight of the Border Patrol, I look forward to the hearing. Again, thank you, Mr. Chairman, for the opportunity to comment on it.

Mr. MAZZOLI. I thank the gentleman from Florida.

The gentleman from Illinois.

Mr. SANGMEISTER. I have no opening statement as such, but I think from the remarks of both the chairman and the ranking member that apparently there is a serious situation out here, and I think we need to hear from INS and everyone else.

You have got good panels here, so we ought to be able to get to the bottom of this, and I think the bottom line is to try to avoid, obviously, any further legislation in this area creating any more commissions than we have to if we possibly can. So we need to know what the facts are.

Mr. MAZZOLI. Thank you very much.

The gentleman from Texas.

Mr. SMITH. Mr. Chairman, thank you. I certainly associate myself with your remarks and also with the remarks of the ranking Republican, Mr. McCollum.

There is no one, I hope, anywhere in Congress or anywhere in America that would condone the abuse or violation of any individual's civil rights, whether it occurs when a person crosses the border or at any other particular time. What I hope, though, will come from this hearing is that we are able to put in perspective those violations that have been documented, if such have occurred.

And when I say put it in perspective, I want to point out what you did, Mr. Chairman—and that is the huge percentage of Border Patrol agents in any capacity serve with distinction. They serve with courage. They have a tough job and they are constantly in danger. A side that we seldom hear about—and I hope we will hear about today from some individual who is going to testify—is that at the same time we consider the civil rights violations that may or may not have occurred, we ought to be talking about the civil rights violations that might occur to the Border Patrol agents themselves. They are threatened; they are injured; some are killed; and it works both ways. I think we need to be just as concerned about the law enforcement officials as we are about the individuals who are trying to come into this country illegally.

In another way, I also think we need to keep what we are hearing in perspective. I know that Mexico itself, which has every reason to want to file a protest with the United States about any abuse or any violation of any civil right of a Mexican national, has filed 24 protests over a 9-year period of time from 1982 to 1990.

Let me put that in context. That is 24 protests filed by Mexico when there were approximately 10 million apprehensions by the Border Patrol agents.

Now I don't excuse any of the 24, assuming that those were civil rights violations, but I think we need to put it in perspective that the Border Patrol, 99.999 percent of the time, does do its job and does it well.

There is one other thing I would like to have us keep in perspective as we go along, Mr. Chairman. I notice in the memo that I have from a counsel that the first example given of a "recent incident" is a report of Border Patrol agents pursuing a vehicle that contained about 11 undocumented aliens.

When the Border Patrol vehicle's lights failed and radio failed, they stopped the chase and pulled off. The speeding vehicle that was being operated by the illegal aliens continued on, eventually ran through an intersection, killed three individuals in another car, and killed two innocent pedestrians who happened to be high school students. Individuals cite that as an abuse of the civil rights of the illegal aliens, or at least that is an incident about which the Border Patrol agents were cited.

To me, that is turning the world upside down. We have an incident here where people who are trying to enforce the law of the United States, the Border Patrol agents, suddenly become the criminals—and the individuals who are in this country illegally, who should be and probably were found guilty of manslaughter, are suddenly the victims of injustice. That is clearly, I hope, not something that we are going to condone in testimony that we hear today.

So, Mr. Chairman, my plea to you and my colleagues and those who are testifying is, first, to keep this in perspective, and, second of all, to remember that we are trying to enforce the laws of the United States, and Border Patrol agents are trying to do their job, and they do do it well in the vast majority of cases.

Thank you Mr. Chairman.

Mr. MAZZOLI. I thank the gentleman, and I certainly agree with that.

I was struck too by testimony which will be given this morning by the Customs Service explaining that there were something like 18 investigations of alleged assault by Customs employees against civilian populations over a period of time measured from June 1992. During that same period of time there were like 5 million passengers processed, and at the same time, interestingly enough, there were 88 investigations of assaults by civilians against Customs people. So actually in that same time period there were more actions directed against Customs than were alleged to be committed by Customs agents.

We welcome our friend from California whose bill this is, and the gentleman is recognized for his statement.

Mr. BECERRA. Thank you Mr. Chairman.

I would first like to again thank the chairman for all his work and efforts on behalf of those of us who are very interested in the issue of immigration. Let me also thank Kitty Urban from your staff as well for doing such a tremendous job working with Valerie



Small Navarro, who has done a tremendous job in my office trying to bring some of these issues to the fore.

Mr. MAZZOLI. Thank you.

Mr. BECERRA. I would like to just focus on a few things, obviously. Since this is a bill that I have before the subcommittee dealing with the INS and creating an independent review commission, I would just like to make a few quick remarks.

First, I don't think there is anyone on this committee who does not agree that the job of the INS officers, whether they are out in the field as Border Patrol agents or within the offices, is very tough. They are dealing with a lack of resources, they are dealing with people who oftentimes cannot communicate with them in English, and it is a very difficult job under the circumstances.

I think there is agreement overall that there is a need for more resources, more personnel, more equipment, better technology, but I also believe that there is a need to take a closer look at the agency and see how it has performed within its own confines.

If we take a look at some of the reports that have been done in the past, stemming back as far back as 1980 when we had some documented reports about abuse within the INS, we see that oftentimes there are a few agents, rogue agents, the few bad apples, that tarnish the image of the entire force. I really believe that we must take care of these particular individuals, because otherwise we give everyone within the agency a bad name, and I think that would be the worst of shames given that these people perform under, as I said, arduous circumstances.

The independent commission is not a new idea, it is not a novel idea. Over 60 percent of the police force, law enforcement agencies, within our big cities have independent review commissions. This is something that people have seen as a way do try to curtail any abuse that might occur. It is better than having police police themselves, just as it would be better, I think, to have someone other than lawyers policing lawyers or doctors policing doctors.

One of the things we are trying to do is also get across the message that if we are going to put more money into personnel within INS, we also have to try to do the best job we can to recruit and train very qualified people.

As I understand it right now—and some of the folk from INS could correct me if I am wrong—all you need to be able to apply for a job with the INS is a driver's license. If we were talking about someone within the FBI, there are much higher requirements.

I really believe that we have to professionalize the force and make sure we are getting individuals who are very qualified. It is not necessary to have perhaps a college degree, but let's do something more to make sure that the people we are bringing in really will serve the interests of the people of the Nation.

We have heard references to the American Friends Services Committee. I don't think there is any doubt that is American Friends Services Committee does a decent job, in fact a very thorough job, of trying to investigate cases of abuse not just nationwide but worldwide.

Americas Watch as well has done some great work on this, and they have documented over 1,000 incidents of abuse in immigration law enforcement agencies over the last 3 years. These include

verbal and psychological abuse, illegal or inappropriate searches and seizures, denial of due process, and destruction of property. Almost half of the incidents involved undocumented immigrants and almost 48 percent were U.S. citizens and others with a lawful right to be in the United States.

So clearly we are not just talking about an abuse of individuals who don't have rights under the Constitution, full-fledged rights under the Constitution.

As I said, a lot of this can be taken care of with good recruitment and excellent training and providing good leadership within the agency, and I really believe that by providing the independent commission we go a long ways toward providing that.

The bill that I have—and let me summarize the bill that I have very quickly—provides an independent commission that would review any cases of abuse. It would not be housed within the INS, per se, it would be staffed by people who come from outside the INS, and it would provide a very independent perspective. We have a preliminary cost estimate from the Congressional Budget Office of about \$5 to \$10 million and \$5 million would take care of 15 employees in each of three offices, and \$10 million would be for 30 employees in each of those offices.

I really believe that that would be a small price to pay for professionalizing and instilling confidence within the INS and within the community of the United States.

When you take a look at what we find within immigration and just the difficult task of trying to apprehend people who are here without documentation, we really must do a good job not only of apprehending but making sure that the INS has the confidence of the people of the United States and the immigrants who are here lawfully as well, to make sure that not only do we find enforcement occurring within INS but also servicing of those who are here with lawful documents to be here as permanent residents.

So, Mr. Chairman, I thank you and the committee for taking the time to consider this proposal. I thank the panels that will be here to testify today, and I hope we are able to elicit some good information to guide us better on whether or not we should proceed with legislation to create an independent review commission.

Mr. MAZZOLI. I thank the gentleman from California who has been a very outstanding member of our subcommittee in the short time he has served on it.

Another outstanding member, the gentleman from Florida, Mr. Canady.

Mr. CANADY. Mr. Chairman, I have no statement.

Mr. MAZZOLI. I thank the gentleman.

[The bill, H.R. 2119, follows:]

103D CONGRESS  
1ST SESSION

# H. R. 2119

To establish an Immigration Enforcement Review Commission.

---

## IN THE HOUSE OF REPRESENTATIVES

MAY 13, 1993

Mr. BECERRA (for himself, Mr. CONYERS, Mr. EDWARDS of California, Mr. GUTIERREZ, Mr. PASTOR, Mr. SERRANO, and Mr. TORRES) introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To establish an Immigration Enforcement Review  
Commission.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Immigration Enforce-  
5 ment Review Commission Act".

### 6 SEC. 2. CREATION OF IMMIGRATION ENFORCEMENT RE- 7 VIEW COMMISSION.

8 There is established the Immigration Enforcement  
9 Review Commission (hereinafter referred to as the "Re-  
10 view Commission"). The Review Commission shall be com-

1 prised of a Board of Commissioners, an Investigations Of-  
2 fice, and a Community Outreach Office. In the execution  
3 of its duties, the Review Commission shall comply with  
4 the requirements established in this Act. The Immigration  
5 and Naturalization Service and the Customs Service (here-  
6 inafter referred to as "the Services") shall cooperate fully  
7 with the Review Commission and its employees in carrying  
8 out the duties of the Review Commission under this Act,  
9 and shall provide to the Commission such records as the  
10 Commission considers appropriate.

11 **SEC. 3. DUTIES OF REVIEW COMMISSION.**

12       The Review Commission shall be responsible for in-  
13 vestigating complaints of civil rights abuses against the  
14 Services, employees of the Services, their divisions, or any  
15 facilities where detainees are held in Service custody.  
16 Based upon its findings, the Review Commission shall  
17 make recommendations to the Services to discipline Serv-  
18 ice employees responsible for committing abuses. The Re-  
19 view Commission shall also make policy recommendations  
20 to the Services as appropriate.

21 **SEC. 4. REVIEW COMMISSION.**

22       (a) **COMPOSITION OF THE BOARD OF COMMIS-**  
23 **SIONERS.**—The Board of Commissioners (hereinafter re-  
24 ferred to as the "Board") shall be composed of 7 members  
25 who shall be appointed by the President by and with the



1 advice and consent of the Senate. The President shall des-  
2 ignate one member to serve as Director of the Board of  
3 Commissioners. Not more than 4 members may be of the  
4 same political party. The members of the Board shall be  
5 full-time employees.

6 (b) APPOINTMENTS AND TERMS OF OFFICE.—

7 (1) Except as provided in paragraph (2), the  
8 term of each Commissioner shall be 6 years.

9 (2) Of the members first appointed, 4 shall be  
10 appointed to terms of 3 years. Not more than 2  
11 members appointed under this paragraph may be of  
12 the same political party.

13 (3) A member appointed to fill a vacancy occur-  
14 ring before the expiration of the term for which that  
15 member's predecessor was appointed shall be ap-  
16 pointed only for the remainder of that term.

17 (4) No person shall serve as a member of the  
18 Board for more than 2 terms.

19 (c) COMPENSATION.—Each member of the Board  
20 shall receive compensation at the annual rate of basic pay  
21 in effect for level V of the Executive Schedule.

22 (d) ELIGIBILITY.—A member of the Board may not  
23 have been employed by the Services within the period be-  
24 ginning 5 years before appointment, or employed by any

1 law enforcement agency within the period beginning 1 year  
2 before appointment.

3 **SEC. 5. ADMINISTRATIVE PROVISIONS.**

4 (a) INVESTIGATIONS OFFICE.—The Review Commis-  
5 sion shall employ such investigative personnel as the  
6 Board considers advisable, in accordance with the civil  
7 service and classification laws. Investigators shall be  
8 charged with the responsibility of investigating all com-  
9 plaints brought to the Review Commission's attention.

10 (b) COMMUNITY OUTREACH OFFICE.—The Board  
11 shall appoint a Director of Community Outreach. The Di-  
12 rector of Community Outreach shall establish local com-  
13 munity task forces to improve the working relationship be-  
14 tween the Services and local community groups and orga-  
15 nizations.

16 (c) REVIEW COMMISSION FACILITIES.—The Review  
17 Commission shall establish a headquarters and 3 regional  
18 offices. The Review Commission may not maintain offices  
19 in a facility under the control or operation of the Services,  
20 or any facility in which either of the Services occupies  
21 space.

22 (d) PERSONNEL LIMITATION.—An employee of the  
23 Review Commission may not have been employed by the  
24 Services within the period beginning 5 years before ap-



1 pointment or employed by any law enforcement agency  
2 within the period beginning 1 year before appointment.

3 (e) REGULATIONS.—The Review Commission is au-  
4 thorized to promulgate such rules and regulations as may  
5 be necessary to carry out this Act including procedures  
6 for the filing, investigation, and resolution of complaints.

7 **SEC. 6. OPERATIONS OF REVIEW COMMISSION.**

8 (a) COMPLAINT FORMS.—

9 (1) Complaint forms shall be made available at  
10 all Service facilities and shall be available upon re-  
11 quest from the Review Commission.

12 (2) The complaint forms shall be written in lan-  
13 guages reflecting the languages of the immigrant  
14 population.

15 (b) FILING OF COMPLAINTS.—

16 (1) Complaints may be filed in person, by mail,  
17 by telephone, by facsimile, or by any other reason-  
18 able means. Complaints may be filed by any person,  
19 including anonymously, and may be filed on behalf  
20 of third parties. Complaints need not be filed on the  
21 official complaint forms.

22 (2) The Review Commission shall establish and  
23 operate a multilingual, 24-hour, toll-free hotline to  
24 receive complaints.

1           (3) Whenever possible, upon receipt of a com-  
2       plaint, the Review Commission shall provide to the  
3       complainant information which describes the review  
4       procedures of the Review Commission. Such infor-  
5       mation shall be available in languages reflecting the  
6       languages of the immigrant population.

7       (c) PUBLIC OUTREACH.—

8           (1) The Review Commission shall educate mem-  
9       bers of the public about its functions and shall re-  
10      ceive and actively seek out suggestions from the pub-  
11      lic to improve the functioning of the Review Com-  
12      mission.

13          (2) The Review Commission shall develop out-  
14      reach materials, which shall include, a description of  
15      the Review Commission, its duties, and complaint  
16      procedures. Such materials shall be made available  
17      to the public in languages reflecting the languages  
18      of the immigrant population.

19          (3) The Review Commission shall oversee the  
20      display and dissemination of outreach materials at  
21      all Service facilities.

22       (d) SERVICE EMPLOYEES' DUTY TO INFORM COM-  
23      MISSION.—

24          (1) When a complaint of agent misconduct is  
25      brought to the attention of any Service employee,

1 the employee shall promptly inform the complainant  
2 of proper procedures for filing a complaint.

3 (2) A Service employee who witnesses or other-  
4 wise obtains actual knowledge of the use of force,  
5 that is unreasonable in light of the facts and cir-  
6 cumstances and involves another Service employee,  
7 shall report such incident to the Review Commission  
8 within 24 hours of the acquisition of knowledge of  
9 such incident.

10 (3) The Review Commission may promulgate  
11 regulations requiring Service employees to report to  
12 the Commission other violations of the Services' op-  
13 erating procedures.

14 (e) INVESTIGATION OF COMPLAINTS.—Each com-  
15 plaint shall be investigated by an investigator who shall  
16 complete and submit a written report to the Board of  
17 Commissioners within 60 days of the assignment, unless  
18 the Board authorizes an extension. The Services shall  
19 grant investigators access to information, documents, or  
20 other items relevant to the matter under investigation.  
21 The Board may issue subpoenas. Service employees shall  
22 cooperate fully with Review Commission investigations,  
23 subject to the protections afforded by the Constitution.  
24 Service employees shall be advised of their constitutional  
25 rights and the procedural rights afforded under this Act.

1 (f) DISPOSITION OF COMPLAINTS.—

2 (1) When the Board receives a written report  
3 on a complaint from an investigator, the Board shall  
4 designate a panel of 3 of its members (hereinafter  
5 referred to as the “Panel”) to review the report.

6 (2) The Panel shall conduct hearings on the  
7 complaint if—

8 (A) the alleged abuse is of a serious na-  
9 ture, as defined by the regulations prescribed  
10 under authority of this Act; or

11 (B) the Panel, by majority vote, decides to  
12 hold a hearing.

13 (3) The Panel shall issue a written finding on  
14 the complaint based on the report alone or on the  
15 report and a hearing, if one is held.

16 (4) The Panel shall forward its finding to both  
17 the complainant and the Service employee. The com-  
18 plainant and the Service employee shall have 30  
19 days in which to review the Panel’s official finding.  
20 During the 30-day period, either the complainant or  
21 the Service employee may take one of the following  
22 actions:

23 (A) If no hearing was held, request that  
24 the Panel conduct a hearing. A hearing shall be

1 held if one member of the Panel votes to hold  
2 a hearing.

3 (B) Regardless of whether a hearing was  
4 held, request an en banc review of the Panel's  
5 decision. An en banc review will be granted if  
6 a majority of the Board votes to conduct such  
7 review.

8 (5) If neither party makes a request pursuant  
9 to subparagraphs (A) or (B) of paragraph (4), or if  
10 such a request is denied, then the Board, promptly,  
11 shall report its finding to the appropriate Service.

12 (6) All findings made by the Board of Commis-  
13 sioners sitting en banc shall be reported directly to  
14 the appropriate Service with copies to the complain-  
15 ant and the Service employee.

16 (g) HEARINGS.—

17 (1) Both the complainant and the subject Serv-  
18 ice employee shall have the right to be represented  
19 by counsel or other representative at Board hear-  
20 ings, to present witnesses, and to cross-examine wit-  
21 nesses.

22 (2) Any finding of a violation on the part of a  
23 Service employee by the Board must be established  
24 by a preponderance of the evidence.

1           (3)(A) Except as provided in subparagraph (B),  
2       hearings shall be open to the public and transcripts  
3       of hearings shall be available to the public.

4           (B) For good cause the Board of Commis-  
5       sioners may close to the public all or any part of a  
6       hearing and may seal all or any part of the tran-  
7       script of a hearing.

8           (4) Unless mandated by unusual circumstances,  
9       a hearing shall be conducted in one location within  
10      the United States that is generally convenient to the  
11      complainant and any potential witnesses.

12      (h) DISCIPLINARY RECOMMENDATIONS.—

13           (1) When a finding of a violation may con-  
14      stitute a criminal offense, the Board of Commis-  
15      sioners shall inform the appropriate Federal or State  
16      authorities so that appropriate prosecutorial action  
17      may be considered. Prosecutorial action shall not re-  
18      lieve the Board of its duties under this Act.

19           (2) When a complaint has been substantiated,  
20      the Board shall recommend disciplinary action  
21      against the subject Service employee. The Board's  
22      recommendations shall be based on a schedule of  
23      sanctions determined by the Commission. If the  
24      Services do not adopt the recommendations of the  
25      Board, they shall provide a written explanation of



1 the grounds for refusal to do so within 30 days of  
2 the Board's recommendation. The Commission's rec-  
3 ommendations and the Service's explanation shall be  
4 made public.

5 (3) Nothing in this Act shall affect the Services'  
6 authority to discipline their employees.

7 (i) EARLY WARNING PROGRAM.—The Review Com-  
8 mission shall conduct a periodic review of all complaints  
9 in order to determine whether particular Service employ-  
10 ees have been the subject of repeated complaints or have  
11 otherwise demonstrated they may be having difficulty  
12 dealing appropriately with members of the public. The re-  
13 sults of this review shall be presented to the Services. The  
14 Review Commission shall make recommendations to the  
15 Services with respect to so identified Service employees in-  
16 cluding, but not limited to, recommendations of training  
17 or counseling.

18 (j) RECORDS OF COMPLAINTS AND STATISTICAL  
19 SUMMARIES.—The Review Commission shall maintain  
20 records of complaints, including a summary of reports  
21 made pursuant to the Early Warning Program under sub-  
22 section (i). The Review Commission shall compile and pub-  
23 lish, at least annually, a statistical summary of all com-  
24 plaints received and the dispositions of such complaints.

1 **SEC. 7. RETALIATION.**

2 (a) **RETALIATION PROHIBITED.**—Retaliation is pro-  
3 hibited and shall constitute the basis for a complaint to  
4 the Commission.

5 (b) **DEFINITION.**—For the purposes of this Act, the  
6 term “retaliation” means any action or threat of action  
7 against a person, including a Service employee, because  
8 such person filed a complaint, testified, assisted, or par-  
9 ticipated in any manner in an investigation or hearing re-  
10 lated to the complaint procedures established by this Act.

11 **SEC. 8. LIMITATION ON USE OF TESTIMONY.**

12 No testimony or other information gathered as part  
13 of a complaint, investigation, or hearing under this Act  
14 may be used in any proceeding under the Immigration and  
15 Nationality Act.

16 **SEC. 9. FUNDING.**

17 Funds authorized to be appropriated for the Offices  
18 of Inspector General of the Department of Justice and the  
19 Department of the Treasury are authorized to be available  
20 to carry out this Act.

Mr. MAZZOLI. We call forward our first panel, which will consist of Ms. Chris Sale who is the Acting Commissioner of the Immigration and Naturalization Service, who is accompanied by Mr. John Chase, who is the Director of the Internal Audit of the INS; and Mr. Peter Baish, Deputy Assistant Commissioner for the Inspections and Control Division of the U.S. Customs Service, who is accompanied by Mr. Robert Holler, District Director of El Paso, TX, Customs.

Ladies and gentlemen, you are welcome. Your statements will be made a part of the record, and we will start off with Ms. Sale and be happy to hear your testimony. To the extent that we will have, obviously, questions and so forth, certainly in your statement, which I have had a chance to read, I think it is important that you address the point of the citizens advisory panel which is getting underway, and also the current procedures without maybe going into the excruciating detail of each and every turn, but just, are they effective? I mean, will they, augmented by this other thing, actually continue to do the job?

Anyway, welcome, and, Ms. Sale.

**STATEMENT OF CHRIS SALE, ACTING COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY JOHN CHASE, DIRECTOR, INTERNAL AUDIT**

Ms. SALE. Thank you, Mr. Chairman and members of the subcommittee.

As the chairman has cited, I have a lengthier testimony which we will insert for the record, but I would like to cover certain salient points if I can.

Clearly, the issue of concern today, the ultimate outcome, is making sure that INS officers, immigration inspectors, Border Patrol officers, detention officers, criminal investigators, and any others that are coming into day-to-day contact with the general public are operating with integrity, professionalism, and impunity. We go to great lengths with the administrative procedures that are available to us, to ensure that.

INS has one of the more elaborate and extensive training programs both for law enforcement purposes and service delivery purposes of any agency of a comparable nature. Our law enforcement officers enjoy a minimum of 15 weeks inservice training before they go to work. Border Patrol officers are conditionally hired having proven that they have a driver's license and a Social Security card, Mr. Becerra, and they also meet a rigorous physical exam, a rigorous qualification review in terms of job history, credit history, and other security information. They meet a complete investigation prior to going into training. They are then hired conditional on passing an 18-week training course that covers the law, ethics, conduct, professional behavior, physical stamina, and Spanish language.

Every immigration officer, be it a Border Patrol officer, an inspector, an examiner, must pass Spanish language requirements prior to being able to go on the job.

With particular emphasis on the Border Patrol, since they are, in fact, the officers that are most at risk in their conduct of duties, we also hold them accountable for a 1-year probation period during

which they pass several inservice exams, physical as well as supervisory evaluations, prior to their first year being completed. They understand the terms of their appointments are that that is a pass/fail process, so that it is not just a question of an extensive preliminary review prior to our bringing them onboard and then 18 weeks of residential training, but then the full year's worth of conditional appointment subject to examinations, supervisory appraisals, and inservice performance.

We do not take our concerns about the quality of the officer that we put on the line lightly, and we go to extreme and large lengths to do the best we can to see to it that they are as good as they can be to perform what is a very difficult and arduous task.

We also provide inservice training, not as much as we would like, but we do provide inservice training, and we provide for firearms and other technical qualifications on a very rigorous basis throughout the officer's career, some of those on quarterly bases during the year.

The Border Patrol also, as well as district officers, understand and appreciate the imperative requirement that they have, which is to work within their local communities, and we have many examples, some of which are cited in the testimony, of local community action, community groups, and other activities in which both sectors and districts reach out to the local community not just in law enforcement interagency task forces and community policing efforts, which we have a great deal of today, but very specifically with citizens advisory groups at the local level, precisely recognizing the very sincere and sensitive nature of our need to interact at the local community with the entire community that is there.

In El Paso, for example, the chief established a community advisory council that represents members of the local community, not necessarily officialdom but citizens from the community at large who are able to come guard and speak to the chief about concerns that the community has or bring specific instances to bear.

In Tucson, a private group composed of local citizens, and in Phoenix, an immigration subcommittee of the Human Relations Committee of the Phoenix City Council are also areas where we participate with the local community.

The Dallas district has conducted cultural sensitivity training for all of its officers. We have asked the Community Relations Service to provide special training for the El Paso Border Patrol Sector on Civil Rights.

This year in San Juan, PR, and in Honolulu, HI, we gave special training to our inspectors on customer relations, professionalism, and communication, recognizing that, being outside the continental United States, we needed to reach out to those employees and ensure that they were still operating within the framework of the immigration community. We were so pleased with that prototype that we will be taking it to all ports of entry on a systematic basis.

In San Diego, the chief has invited local members of the community to brown-bag and other musters of his officers, the FBI has come in, and we have had a whole series of specialized training very particularly dealing, first and foremost, with integrity, ethics, and civil rights, and then with officer safety and a whole variety of issues as well.



Those are just a few examples of what we have attempted to do.

With regard to the process, as distinct from our commitment to officer training and security, I think it is absolutely fair and correct to say that INS's processes and procedures have been in need of improvement.

Two years ago, the Office of Internal Audit was established under the reorganization that was put in place by Commissioner McNary and approved by this committee with an intent, first and foremost, to give the Commissioner direct and independent access to evaluation of how programs are performing. John Chase was hired, and he has got a team in place.

In February of this year, we expanded that Office, and I asked that John take on the additional responsibility of centralizing, overseeing, and providing for quality review of the investigations that are performed on behalf of INS, as directed by the IG or the Office of Civil Rights, to ensure that we were, in fact, timely, consistent, and thorough in the conduct of investigations that are referred to us.

Let me back up a little bit and explain what the departmental process is, if I may.

When the IG Office, the internal investigator for the Department of Justice, was established, what was then the Office of Professional Responsibility in INS, was removed in toto as part of the consolidation and establishment of the Office of the Inspector General at the Department of Justice.

Any allegation that is received by an employee, by a member of the general public, by a concerned citizen, by any officer in INS, under current regulations, is and must be directed to the Office of the Inspector General. Those allegations come in from all across the country. We run about 1,400 a year today.

You need to understand that that runs the gamut from, "John spit at me," or, "I think he smells," or, "He is taking a long lunch hour," or, "He has used his car when I don't have one"—that whole sort of employee complaint activity, to the very serious and obviously important civil rights concerns that we concern ourselves with.

The IG reviews and considers all of those individually on a case-by-case basis and makes two cutoffs. The first screening is: Is there anything here that appears to be a civil rights violation? And if it is, the IG, under directive of the Attorney General, reports that to the Division of Civil Rights in the Attorney General's Office where specialized investigations and law enforcement activities occur. That may or may not ultimately engage the FBI in some special review, it depends on the case.

If the IG or the Office of Civil Rights decides that it is not a civil rights issue, then it goes back to the IG who makes a second determination, which is whether or not his office will accept the case for investigation and action.

If the IG decides not to accept the case, then, in fact, he remands the case to INS for appropriate action. Those cases fall in two categories, categories that the IG asks us to perform an investigation on and report to him, and cases that the IG doesn't want to hear about any more, he just wants us to take care of. On average, bet-

ter than 70 percent of the cases that the IG receives are remanded to the INS for investigation.

When we established the Office of Internal Audit and began to look at how that worked, we discovered that, absent any resources to perform this work, what had been happening was that those cases were received in the Office of the Commissioner and then transmitted to regional offices for action, generally through the employee relations branch of the regional office administrative management component, who logged it and asked a criminal investigations officer to assign an investigator to pursue it if that was the appropriate measure.

It is clear today that we had four sets of procedures in four regional offices for the tickling and followup on those cases. In two instances, we were very timely and very complete in our activity. In others, that was not as much the case.

In February, all of those cases were centralized to the Office of Internal Audit. We have a computerized system that tracks them and is beginning to establish a log so that we are in a position to do analyses on the nature of the cases, to know, by office, by nature of complaint, and by specific site, whether or not we are, in fact, getting repeat offenses of a similar nature, to give us the diagnostic tools that we need to follow up on these not just in these specific instances which are dealt with as quickly as we possibly can deal with, but more generically to give us management information on whether or not there seems to be a supervisory problem or something else, given the fact that there may be several inquiries.

This system has only been in place since February, and we are slowly building a data base, but we can report to you that, of these 700 cases that have been submitted this year, over 100 have been investigated and completed, and fewer than 5 sustained as having had any civil rights activity. Appropriate action in those instances is ongoing, and those individual instances will be dealt with under a disciplinary policy that is the Department's policy, as is individually necessary.

Last year in our appropriations bill, Congress recommended to the Department of Justice that a citizens advisory panel be established. We have prepared such a proposal and transmitted it to the Associate Attorney General for his consideration. It is now in a clearance process at the Department, and provides for 14 members, if I remember the number correctly, a representative of the Community Relations Services organization in Justice, a representative of the Civil Rights Division in Justice, and then members—obviously, the Commissioner of INS, and members representing public interest groups and the communities at large that are available. We have also proposed that the Mexican consul be asked to participate on an ad hoc basis, as distinct from having a full voting membership on the panel, that is simply recognizing that the panel would be an instrument of the U.S. Government.

We hope that that panel will help us verify cases of abuse, support our goal to reduce the incidents of abuse along the border, reinforce employee accountability standards, highlight the Department's support for human rights, and establish a forum to receive complaints and to receive recommendations for systemic solutions.



Those include, in my mind, training culturalization requirements, specific incidents where we may need to look at particular locations that need assistance, and a broad variety of policy agenda that would come forward as a result of this participation on the part of the panel.

I have gone to some length in describing all of this because I think it is important to put in context both what is clearly our support for the objectives H.R. 2119 but also our sense that we have in place elaborate procedures to attend to the very issues that H.R. 2119 attempts to resolve and to provide a backdrop for the reason that we believe that it is not necessary or desirable at this point to create a new bureaucracy to increase the amount of offices that are already associated with this process, and we ask an opportunity to let the community advisory panel that the AG, strongly supports and will put in place—I mean once Ms. Meisner, if confirmed, is available, a lot of these things will actually come to fruition, it is staff work that is ready for her final action—and give that panel an opportunity to take effect; let us demonstrate the effectiveness of the procedures that we now have in place under the Office of Internal Audit prior to supplementing all that with yet another bureaucratic entity.

I have taken more time than I should have, Mr. Chairman, but I appreciate your patience.

[The prepared statement of Ms. Sale follows:]

PREPARED STATEMENT OF CHRIS SALE, ACTING COMMISSIONER, IMMIGRATION AND  
NATURALIZATION SERVICE

Mr. Chairman and Members of the Subcommittee: I am pleased to appear before you today to address issues regarding the Immigration and Naturalization Service (INS) and H.R. 2119, the "Immigration Enforcement Review Commission Act." The INS and Department of Justice (Department) share the concern of Congressman Becerra and co-sponsors of H.R. 2119 about alleged civil rights violations by INS and appreciate your diligent efforts to address this issue.

Department and INS officials are very committed to investigate all allegations of wrongdoing and to impose sanctions on those who have violated the civil rights of both citizens and aliens. As part of this effort, INS has been working to improve the existing complaint and investigations mechanisms.

In addition, INS has submitted a proposal to the Department to implement a Citizens Advisory Panel for the purpose of accepting and reviewing civilian complaints of abuse against employees of the INS. This proposal would implement the conference report language from the FY 1993 Commerce, Justice, State and Judiciary Appropriations. Therefore, while I certainly support the goals of this legislation, it is my belief that the bill would duplicate existing and proposed safeguards regarding civil rights violations. I am confident that these measures will address the very serious concerns that you and others have raised, without the necessity of adding another layer to government, as H.R. 2119 would do.

BASIC OFFICER TRAINING

Our first opportunity to lessen the likelihood of potential misconduct or abuse occurs at the recruitment stage. All persons applying for an INS officer position are subject to a thorough background investigation regarding qualifications, loyalty, honesty, and integrity. Evidence of habitual use of intoxicants to excess, disloyalty, moral turpitude, disrespect for law, failure to honor just obligations, unethical dealings or material misstatement of fact on the application for employment, and related documents are considered sufficient reason for rejection or termination.

Upon entering on duty, an officer trainee is detailed to the Federal Law Enforcement Training Center in Brunswick, Georgia to receive intensive instruction. Officers receive in-depth training in the history and responsibilities of the INS, immigration and nationality laws, Spanish language, civil rights, firearms training, driver training, police training and other related courses.

Many of the courses at the Academy relate to enhancing an officer's ability to deal effectively, with sensitivity, to situations involving aliens and the general public. An emphasis on integrity, sensitivity, ethical conduct, and professional responsibility is stressed throughout basic training in many different ways. For example:

Constitutional Law stresses those aspects of the Constitution directly affecting law enforcement officers in the conduct of their duties and the protection and rights provided to persons in the United States.

Officer Liability teaches the civil and criminal basis for officer liability and the types of conduct which can establish this liability and the possible consequences of improper conduct.

Victim/Witness Awareness focuses on assistance to victims and witnesses of crime.

Communications explains the importance of refining skills in communication and human interaction and the value of these tools when interacting with the public.

Ethics and Conduct explores ethical questions confronting law enforcement officers and provides guidance on proper conduct, particularly as it relates to the Law Enforcement Code of Ethics.

Officer Integrity describes the standards of conduct for officers of INS who deal with aliens and the general public.

Cultural Awareness examines cultural differences and the impact these differences have on communicating and dealing with people from diverse cultures.

Spanish Language proficiency, a mandatory requirement for all INS officers, comprises one-third of the basic training curriculum.

Use of Force training addresses legal authorities, constitutional and judicial constraints, pursuit driving/vehicle stops, judgment shooting, situational responses, decision reaction shooting, non-lethal techniques, and removal/transport of a resistant suspect.

The emphasis on Spanish-language training is particularly noteworthy as the vast majority of the persons encountered by immigration officers are from Spanish-speaking countries. A clear understanding of the Spanish language is critical to making appropriate decisions and avoiding miscommunication in many cases.

There can be no greater impediment to communication and understanding for a law enforcement professional than a language barrier. INS officers, in order to live and work in close-knit Spanish-speaking border communities, must understand the language and the culture of their neighbors. Misunderstandings can endanger the safety of both the officer and the person he or she encounters.

The emphasis throughout the training program is on self-discipline, professionalism, integrity, and technical competency. Successful candidates can feel a sense of pride in their accomplishment.

#### LOCAL INITIATIVES

Beyond the emphasis on sensitivity, communications, ethical conduct and cultural awareness in the basic officer training curriculum, local District and Border Patrol Sector offices have established meaningful liaison with local groups, and many have offered specialized training.

INS has a history of cooperation and involvement with the communities in which we live and serve. For instance, in Tucson, Arizona, the Sector and District meet regularly with the Arizona Immigration Steering Committee, a private group comprised of local citizens, and in Phoenix, with the Immigration Subcommittee of the Human Relations Committee of the Phoenix City Council.

Further evidence of our commitment to enforce the immigration laws of our country fairly and humanely is the establishment of a community relations board in the El Paso Border Patrol Sector to address negative feelings toward enforcement operations. The board membership includes 9 representatives from advocacy groups, religious organizations and local businesses, and the Chief Patrol Agent. The El Paso community relations board has fostered improved local community relationships and has established a documented and defensible complaint review process.

The El Paso Sector has instituted several different mechanisms to improve the complaint process. They developed a new complaint form, informational poster, brochure and bumper stickers for Border Patrol vehicles which display telephone numbers and addresses for complaints. The poster, forms and brochures are in both English and Spanish, and are displayed in prominent locations in all processing facilities and checkpoints.

They have also instituted an automated complaint tracking system, which logs all complaints, tracks the cases and any disciplinary actions taken. A letter of acknowl-

edgement is sent to the complainant with an assigned case number and information on how to check on the status of the complaint.

Many Districts and Sectors have provided specialized post-academy training, as needed. For example, the Harlingen, Texas District office arranged for trainers from the Federal Law Enforcement Training Center to provide stress and ethics training to personnel. In the San Diego District, over 300 employees have received "Increasing Human Effectiveness" training which focused on maximizing individual potential and relating positively to fellow employees and the public. The Dallas District conducted "Cultural Sensitivity Training" which focused on the importance of non-verbal communication and reaffirmed the need to maintain a positive attitude and empathy toward each individual culture as INS deals with the public. Ninety-five percent of the personnel from the Examinations, Inspections, Management and Detention/Deportation sections attended this training session.

The Community Relations Service (CRS) of the Department of Justice provided special training to approximately 725 employees of the El Paso Border Patrol Sector. The training focused on constitutional and civil rights, as well as cultural sensitivity for law enforcement officers in both community and individual relations. In addition, the Sector is currently conducting ethics training for all officers.

The San Diego Sector has an active training program which includes annual ethics, officer integrity, and civil rights training. Monthly law refreshers focusing on civil rights are conducted. They feature instruction on the use of force, probable cause for arrest, and court decisions affecting the standard applied in these decisions and how they may affect procedures and operations. Recently, agents from the Federal Bureau of Investigations (FBI) and the Office of Inspector General (OIG) have been attending various "musters" to speak to agents concerning civil rights issues, allegations of abuse, and misconduct.

This year the Office of Inspections conducted prototype training programs in San Juan, Puerto Rico, and Honolulu, Hawaii, which emphasized professionalism, cultural awareness, sensitivity, and communication. Due to the program's success, Inspections is developing a program which expands upon this prototype and will be incorporated into basic, journeyman, and supervisory training, as well as field training at ports-of-entry nationwide.

These are just a few examples of the many initiatives that have been undertaken by various districts and sectors. They reflect the priority which the INS places on responsible service and positive public image.

#### USE OF DEADLY FORCE

INS officers adhere to well-established policies and guidelines on the use of firearms and deadly force. The INS Firearms Policy states that the authority to carry firearms imparts an obligation and responsibility to exercise discipline, restraint, and good judgment. The policy also states that firearms will not be used to intimidate or coerce. Throughout the firearms training program, officers are taught legal and moral principles regarding their duties and responsibilities as sworn law enforcement officers.

These policies are not unique to INS but are commonly taught by all agencies at the Federal Law Enforcement Training Center, and are in conformance with those of most local, state, and federal law enforcement agencies.

The policy on the use of deadly force is as follows:

A firearm may be discharged only as a last resort when the officer reasonably believes that there is the threat of imminent danger or loss of life or grievous bodily harm to himself or to another person. Any use of firearms by Service personnel must be within the guidelines of this policy, and be legally justifiable and reasonable under the circumstances.

#### USE OF NON-DEADLY FORCE

An official INS policy on the use of non-deadly force has recently been created and approved by the Acting Commissioner, and its implementation is currently being negotiated with the unions. This new policy will standardize the criteria for the use of non-deadly force. It will also authorize, as well as prohibit, certain devices and techniques, and create a training and certification process to ensure that all appropriate immigration officers are thoroughly familiar with its contents and trained in the non-deadly force devices they are authorized to use.

The policy on the parameters for the use of non-deadly force will be as follows:

Non-deadly force may be used only when a designated immigration officer is in the performance of official duties and has reasonable grounds to believe that such force is necessary to:



- (a) Protect the officer or other persons from bodily harm; or
- (b) Restrain or subdue a resistant prisoner or suspect; or
- (c) Effect an arrest; or
- (d) Prevent the escape of a prisoner.

The Service policy on the use of force is based on the "force continuum" model taught at the Federal Law Enforcement Training Center. From options on this continuum, immigration officers shall always use the minimum level of force necessary to accomplish their mission and shall escalate to a higher level of force only when such higher level of force is warranted by the actions, apparent intentions, and apparent capabilities of the suspect, prisoner, or assailant.

#### INVESTIGATION OF ALLEGATIONS OF ABUSE

Currently, all complaints concerning INS employees are lodged with the OIG or the Office of Professional Responsibility (OPR) of the Department of Justice. It must be noted that many allegations do not involve alleged civil rights abuses of aliens. A decision is made by the OIG or the OPR to investigate the allegations themselves, refer the allegations to the Civil Rights Division of the Department of Justice for investigation, or refer the allegations to the INS for investigation, inquiry, or management action.

In general, allegations of criminal, or potentially criminal, misconduct are investigated by the OIG. In addition, allegations of serious administrative misconduct by a Departmental employee at the GS/GM 14 level or above are investigated by the OIG. Allegations involving non-criminal behavior, administrative misconduct, or other wrongdoing by employees below the GS/GM 14 level are referred by the OIG to INS for "investigation, inquiry, or managerial oversight." Other allegations of a non-serious nature received by the OIG are referred to INS for information.

The INS Office of International Audit (OIA) is independent of INS operational offices and reports directly to the Commissioner. It has been administering the processing of all allegations referred to INS since February 15, 1993. Prior to that time, the OIG forwarded cases to the INS Commissioner, who forwarded them through management channels to the INS Regional Office. Those offices forwarded to local management what they deemed to be the less serious cases, and assigned the more serious cases to investigators who handled them on a collateral duty basis.

The OIA has established new procedures for processing allegations of misconduct and has dramatically increased the level of headquarters oversight of the process. Cases requiring investigation are assigned to INS field investigations who now provide formal reports of investigation of the OIA. Cases requiring management inquiry are referred to senior field managers who must also provide written reports of their findings and, if the allegations are substantiated, of the corrective action taken. In all cases, the OIA ensures that investigations and inquiries are timely and thorough, that documentation supports the findings, and the appropriate corrective action is taken. As a result of the OIA involvement, significant improvements have been made in the timeliness of case processing, the quality of investigation and inquiry reports, and the overall responsiveness of the system.

In the immediate future, as its staffing is completed, the OIA will take a much more active role in the substantive aspects of employee misconduct allegation processing and investigations. The OIA will conduct investigations, currently referred to field investigators, providing an even higher level of oversight to ensure overall quality and timeliness. It will follow up on cases to ensure not only that appropriate corrective actions have been taken, but that the actions have been effective. And, perhaps most importantly, it will analyze trends in allegations and findings to identify systemic problems and recommend local and Service-wide solutions. If they find that an officer has been implicated a number of times, counseling and/or special training will be conducted for that officer, regardless of the disposition of the individual complaints.

In FY 1992, INS was responsible for over 525 million inspections, 1.2 million apprehensions, nearly 38 thousand deportations, and the seizure of illegal drugs valued in excess of \$1.6 billion. Considering the high volume of immigration law enforcement activity, that by its nature takes place in direct contact with the general public, the number of complaints are remarkably low. However, all complaints and allegations of misconduct or abuse are taken very seriously. I am fully committed to ensuring that allegations of abuse or misconduct are aggressively pursued and, when proven malfeasance occurs on the part of any INS employee, appropriate disciplinary action will be taken.

I have issued a directive to the field regarding responsible law enforcement. In that directive, while recognizing that the very nature of law enforcement work creates susceptibility to such charges, I have urged all INS employees not to lose sight



of the fact that the public trust implicit within the Constitution obliges law enforcement officials to shoulder the responsibility of respecting and protecting the human rights of all individuals.

#### ESTABLISHMENT OF A CITIZENS' ADVISORY PANEL

INS was directed by the FY 1993 Appropriations for Commerce, Justice, State and the Judiciary conference report to establish a Citizens' Advisory Panel (CAP). INS has submitted to the Department a proposal to implement the CAP, which would accept and review civilian complaints of abuse against employees of the INS. Complaints of abuse are typically related to the manner in which a citizen or non-citizen was treated during contact with an INS employee.

This positive initiative, which has strong Departmental support, serves the following objectives:

- helps to verify the number of actual abuse incidents; supports the administration's goal to reduce the incidence of abuse along the border;
- reinforces employee accountability standards;
- highlights the Department's continued support of human rights and treatment as guaranteed by the constitution;
- establishes a forum for improving communication and understanding at the local or community level; and
- improves the national INS public service image through demonstrated cooperation and participation.

#### H.R. 2119

I believe the INS has demonstrated and remains vigilant in its commitment to promote and protect the human rights of all individuals. Furthermore, INS understands the need for continuing attention to the integrity of our officers and shares the concerns which this bill seeks to address.

H.R. 2119, the Immigration Enforcement Review Commission Act of 1993, would establish an Immigration Enforcement Review Commission (Commission). The purpose of the Commission would be to receive and investigate complaints of civil rights abuses against the INS and the Customs Service (the Services), employees or divisions of the services, or any facilities in which detainees are held in INS custody. On the basis of the results of its investigations and subsequent findings, the Commission would make recommendations to the Services concerning disciplinary action against the employees responsible for abuses.

The bill calls for the Commission to consist of 7 commissioners, and investigations and community outreach offices to be located in headquarters and 3 regional offices. The Department strongly believes that it is neither necessary nor desirable to create a new bureaucracy of this size at a time when the Executive Branch is under a mandate to effect significant reductions in size. In addition, the CAP proposal currently being reviewed by the Department will provide an independent forum for review of the same kinds of complaints which this legislation would assign to the Commission. Given this proposal and the existing review system consisting of the OIG, OPR, and the Civil Rights Division in the Department itself, the OIA in the INS, and the Office of Special Counsel, enactment of this legislation is not necessary at this time.

The Department will transmit to Congress a bill report which addresses the particular provisions of H.R. 2119 shortly. However, the Department recommends that consideration of this legislation be postponed until the Department and the Congress have the benefit of studying the operations of the Citizens' Advisory Panel which Congress has directed the Department to establish.

#### CONCLUSION

Respect for human rights remains a cornerstone of policy and procedure within the INS. We are committed to working with Congressman Becerra, other Members of Congress, and all others who are seeking to improve procedures that ensure that civil rights are respected. The INS mission requires us to preform many essential functions by providing services to those wishing to immigrate legally to our country, and intercepting illegal aliens, narcotics, and other contraband along our nation's borders. It is a demanding task, often involving grave personal risk for the officers. The INS has a excellent record of discipline, proud tradition, and a strong devotion to the preservation of human life. When human errors do occasionally occur, there are clearly defined mechanisms for review of complaints and investigation by profes-

sionals from both within and outside the INS. Please be assured of our commitment to strict enforcement of civil rights.

This completes my prepared remarks. I would be glad to respond to any questions you may have.

Mr. MAZZOLI. I am happy to have extended that opportunity to completely describe your statement because it is very important, it is central to the whole rest of our panel discussion, So we thank you.

Mr. Baish.

**STATEMENT OF PETER J. BAISH, DEPUTY ASSISTANT COMMISSIONER, INSPECTION AND CONTROL DIVISION, U.S. CUSTOMS SERVICE, ACCOMPANIED BY ROBERT HOLLER, DISTRICT DIRECTOR, EL PASO, TX**

Mr. BAISH. Yes, good morning, Mr. Chairman.

Mr. MAZZOLI. Good morning, sir.

Mr. BAISH. Mr. Chairman and members of the committee, it is a pleasure to be here today to discuss the issue of civil right, particularly as it relates to individuals seeking entry into the United States.

With me today is Mr. Robert Holler, District Director of El Paso, TX, the Customs district office. Mr. Holler is here with me today because, as Director of a large district like El Paso, he can provide insights into the day-to-day experiences of Customs employees working on the border.

Mr. Chairman, Customs employees are literally situated at the crossroads through which practically every culture imaginable passes each day. Understandably, the Customs Service is extremely concerned about the protection of civil rights and cannot condone nor tolerate any abuses. The need for Customs employees to project attitudes of courtesy and professionalism and to understand and manage all the interactions that cut across cultural and ethnic lines is greater than ever before. We believe that we are meeting this challenge.

The level of professionalism among managers, supervisors, and employees has been elevated to the highest priority status within the Customs Service. Since the spring of 1992, professionalism seminars have been presented to over 5,000 inspectors, canine enforcement officers, and inspectional aides at 50 locations throughout the United States.

Material covered in this training places special emphasis on the targeting and selection of travelers for inspection. The training also provided during these seminars has been incorporated into all mandatory training courses at the U.S. Customs Service Academy in Glynco, GA.

Recognizing the importance of this training, we have expanded it and focused the training on Customs's management community. The purpose of this training, which includes an 8-hour block of cultural diversity and awareness, is to develop and to market a positive management philosophy that instills and maintains professionalism within our work force. The training has been provided to over 300 supervisors and managers and continues at this time.

While we admit that, like other law enforcement agencies, we have had instances of alleged civil rights abuses within Customs,

the percentage is minimal compared to the millions of passengers that are processed each year. However, we agree that just one allegation of civil rights abuse is one too many. Therefore, we have policies and procedures in place to take appropriate action when they do occur.

In those instances where civil rights violations are investigated, our Office of Internal Affairs is responsible for investigating. Customs employees are required to report all misconduct to Internal Affairs, and that information, along with any civilian complaints against our employees, is aggressively investigated by our Internal Affairs special agents.

Evidence of criminal wrongdoing is presented to the U.S. attorney's office for prosecution determination, which may involve review of the case by the Department of Justice Civil Rights Division. This well-established framework ensures that any allegations of violations of civil rights are properly and promptly investigated within the Customs Service.

A review of all assault cases for the 15-month period from June 1992, which you were kind enough to present in the opening statements, revealed that Internal Affairs agents investigated 17 separate allegations of assault by a Customs employee upon a civilian.

I must tell you that our testimony reads "18." In preparation for this morning's testimony, I went over each and every one of those cases, and we discovered that we had made an error; there were 17 cases; 7 were substantiated, and 5 were unsubstantiated, retracted, or dismissed in court; the remaining 5 are currently under investigation. No employee was convicted. However, Customs administrative punishment for the offending employees ranged from counseling to dismissal.

Again, the number of allegations is too many, and this is a decidedly small percentage compared to the 570 million passengers who are processed during the same 15-month period.

Previously, we had told you that we had made a mistake of one, from 18 to 17. This time we made a much bigger mistake.

Mr. MAZZOLI. Was that 570?

Mr. BAISH. Five hundred and seventy million rather than the 5.7.

Mr. MAZZOLI. And I used 5.7.

Mr. BAISH. That includes all the people that Customs and Immigration deal with at our airports and seaports. I apologize for those errors in our written testimony.

Our statistical review also disclosed the inherent dangers of officers performing border enforcement. During this same time, Internal Affairs agents conducted 88 investigations upon civilians who allegedly assaulted Customs employees during the performance of their official duties. The disposition of those cases accepted for prosecution ranged from court conviction to incarceration and to dismissal of the charges.

In closing, I would like to reiterate that the Customs Service has made officer professionalism a high priority, and the Customs Service does have an established effective framework to address the allegations of wrongdoing.

Therefore, we believe the proposed legislation is unnecessary as far as Customs is concerned. We believe there is no need for the



Customs Service to be subject to a review such as that proposed in the legislation.

Mr. Chairman, I would ask that my formal statement be entered into the hearing record, and at this time Mr. Holler and I are pleased to answer any questions you may have.

[The prepared statement of Mr. Baish follows:]

PREPARED STATEMENT OF PETER J. BAISH, DEPUTY ASSISTANT COMMISSIONER,  
INSPECTION AND CONTROL, DIVISION, U.S. CUSTOMS SERVICE

Mr. Chairman and Members of the Committee, it is a pleasure to be here today to discuss the issue of civil rights, particularly as it relates to individuals seeking entry into the United States. With me today is Mr. Robert Holler, District Director of the El Paso, Texas, district office. Mr. Holler is here with me today because, as Director of a large district like El Paso, he can provide insights into the day to day experiences of Customs employees working on the border.

Mr. Chairman, Customs employees are literally situated at crossroads through which practically every culture imaginable passes each day. Understandably, the Customs Service is extremely concerned about the protection of civil rights and does not condone or tolerate any abuses thereof. The need for Customs employees to project attitudes of courtesy and professionalism and to understand and manage all interactions that cut across cultural and ethnic lines is greater than ever before. We believe that we are meeting this challenge.

The level of professionalism among managers, supervisors, and employees has been elevated to the highest priority status within the Custom Service. Since the Spring of 1992, professionalism seminars have been presented to over 5,000 inspectors, canine enforcement officers, and inspectional aides at 50 locations throughout the Customs Service. Material covered in this training placed special emphasis on the targeting and selection of travelers for inspection. The training provided during these seminars has been incorporated into all mandatory training courses at the U.S. Customs Service Academy.

Recognizing the importance of this training, we have expanded it and focused the training on the Customs management community. The purpose of this training, which includes an eight hour block of cultural diversity and awareness, is to develop and market a positive management philosophy that instills and maintains professionalism within the workforce. This training has been provided to over 300 supervisors and managers.

While we admit that, like other enforcement agencies, we have had instances of alleged civil rights abuses within the Customs Service, the percentage is minimal compared to the millions of passengers that are processed each year. However, we agree that just on allegation of civil rights abuse is one too many; therefore, we have policies and procedures in place to take appropriate action when they do occur.

In those instances where civil rights violations are alleged, the Office of Internal Affairs (IA) is responsible for investigating. Customs employees are required to report all misconduct to IA, and that information, along with any civilian complaints against employees, is aggressively investigated by IA Special Agents.

Evidence of criminal wrongdoing is presented to the U.S. Attorney's Office for prosecution determination, which may involve review of the case by the Department of Justice Civil Rights Division. This well-established framework ensures that any allegations of violations of civil rights are properly and promptly investigated within the Customs Service.

A review of all assault cases for the 15 month period from June 1992 to present, revealed that IA agents investigated 18 separate allegations of assault by a Customs employee upon a civilian. Of the 18 allegations, 7 were substantiated; 6 were unsubstantiated, retracted, or dismissed in court; and 5 are currently under investigation. No employee was convicted; however, Customs administrative punishment for the offending employees ranged from counseling to dismissal. Again, while any number of allegations is too many, this is a decidedly small percentage compared to the 5.7 million passengers who were processed during the same 15 month period.

Our statistical review also disclosed the inherent dangers to officers performing border enforcement. During this same time period, IA agents conducted 88 investigations upon civilians who allegedly assaulted Customs employees during the performance of their official duties. The disposition of those cases accepted for prosecution ranged from court conviction and incarceration, to dismissal of the charges.

In closing, I would like to reiterate that the Customs Service has made officer professionalism a high priority and the Customs Service does have an established, effective framework to address allegations of wrongdoing. Therefore, we believe the



proposed legislation is unnecessary as far as the Customs Service is concerned. We believe there is no need for the Customs Service to be subject to a review such as that proposed in the legislation.

Mr. Chairman, I would ask that my formal statement be entered into the hearing record. At this time, Mr. Holler or I would be pleased to answer any questions you may have.

Mr. MAZZOLI. We thank you both very much for excellent statements. Let me yield myself 5 minutes to begin the questions.

To put this thing into some perspective, the 17 separate allegations of assault against 570 million inspections by your people is also pretty much the same case with INS, because looking at page 12 of Ms. Sale's testimony, in fiscal year 1992 INS was responsible for over 525 million inspections, 1.2 million apprehensions, 38,000 deportations, and seizure of illegal drugs, and I think my recollection was something like 1,400 cases were referred.

Am I correct, Ms. Sale, that some of those were just plain tattling, along with something super-serious? Is that correct?

Ms. SALE. Yes. It is unfortunate, Mr. Chairman, that the IG doesn't, to my knowledge, keep track of cases on that basis. There is simply this gross number.

Of the ones that we are seeing, it is clear that the largest proportion are cases of employees complaining about other employees.

Mr. MAZZOLI. So, in other words, this figure of 1,400, which winds up going to the Department of Justice's Office of Inspector General, is not what you would call massaged or culled or cleaned or winnowed or anything like that?

Ms. SALE. No. That is a raw number of complaints.

Mr. MAZZOLI. This is it.

Well, again, I would have to say that I think the preparation which you very distinctly got into at the beginning of your statement, the preparation of each agent for his or her role, and then the inservice training thereafter, certainly seems to have yielded a setting in which you have rare experiences with the rogues or the violence-prone persons, and they are not to be condoned and not to be accepted, and they are to be weeded out. But that does put this thing into some perspective.

I might say in that regard, I think there is something like \$45 million of additional money for the Border Patrol which, under the Duncan Hunter amendment, is currently pending in the conference, so there may be some possibility in some of the things you talked about today—the fact that you have inservice training but not as much as you would like to have, you have upgrade experiences in the Service but you would like to have more—maybe this will enable you to have more.

Let me ask you one thing. I was astonished when I read this language from the Senate report and from the conference committee report dealing with the citizens advisory panel in that a representative of the Mexican consulate would sit on the committee with U.S. citizens. I mean I couldn't believe that the Senate would ever act on such a measure like this.

So I am happy to see that you have somewhat transformed that into something that deals with an ad hoc as a kind of resource but not as a full-fledged member.

Ms. SALE. Our recommendation has been that the Mexican consul be asked to be advisory to this panel but not a voting member

or a full-fledged member, for all the reasons that you understand, Mr. Mazzoli.

Mr. MAZZOLI. Let me tell you, if that is overruled, I hope that this thing doesn't go into effect. I would hate to have an American citizen at the border, doing dangerous and delicate work, to somehow have the decision made by a non-U.S. citizen as to his or her fate. I think that would be abominable. I think that would be outrageous, and I think that would be beyond the norm and beyond the pale of anything that I think should deal with misfeasance or malfeasance on the part of U.S. people.

Ms. SALE. Clearly, we have concerns about ensuring the privacy and the safety of our officers subject to allegations until we know the facts of a case. It is just as likely that an allegation not necessarily be accurate as it is that an officer has, in fact, gone wrong. We clearly want to know the facts, but we want to fix them.

There are issues of sovereignty with regard to Mexico's participation. But I would like an opportunity, Mr. Chairman, if I may, to say very positively, on the other hand, that, in collaboration with the Department of State, we have established an MOU with the Government of Mexico in which we are now encouraging consul-to-consul meetings to include all the local law enforcement agencies at each of the consuls along the southern border.

Those meetings are already engaged precisely to deal at a local level with these kinds of concerns, and we have had a great deal of cooperation from Mexican authorities in dealing with border violence issues, and I want to acknowledge that, while we obviously understand the issues of sovereignty.

Mr. MAZZOLI. I think that is wonderful, and I think you point out, in El Paso, you all have quite a lot of that, too, in coordination with Customs. I think that is great. Coordination and consultation is tremendous.

But when there is a non-U.S. citizen on a citizens advisory panel who would, first of all, accept and then review complaints filed against U.S. citizens, particularly doing the kind of work that Border Patrol and Customs people have to do, I just think that that goes beyond what is acceptable.

Ms. SALE. We share your concerns, Mr. Mazzoli, and thank you for that.

Mr. MAZZOLI. My time has expired. I yield to my friend from Florida.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

Ms. Sale, I am curious about something. I have been reading that the Border Patrol and the INS have had considerable success in deterring border crossings where you have really put some force into specific localities.

Doesn't that suggest that if we substantially increased the number of Border Patrol agents that we could have a more effective control of the border?

Ms. SALE. Clearly, additional manpower in jobs such as controlling the land border that we share with Mexico is imperative, and I hope, and I expect, that members of this committee will support us in the President's amendment to increase the Border Patrol this year by some \$45 million and up to 600 officers.

I assume that you are referring to the special initiative that we have engaged in in El Paso where, in fact, under special circumstances and with a great deal of collaboration and consultation with local authorities as well as the Mexican consul, we have demonstrated that an extraordinary effort at the border ensures both the safety and security of the local community and commerce but provides us an opportunity to do the job that I think needs to be done.

In 1989, I think, we had the Defense Department tell us what they thought it would take to secure the border, and their response was, 28 divisions. That is 28,000 people. That number is not reasonable. So we are looking for a complement of technology as well as manpower to be able to most effectively do our job without being unreasonable but what is realistically possible.

Mr. McCOLLUM Some of us have suggested considerably more—not 28,000, but a doubling of the present number, or adding 3,000, or something like that. What are the training capacity problems with adding new Border Patrol?

Ms. SALE. We do all of our training under a Border Patrol Academy, which is a component of the Federal Law Enforcement Training Center, which the Department of the Treasury runs in Glynco, GA. We also have under the auspices of that Center a facility in New Mexico where we do our journeyman level training.

We are very, very pleased to see that the Department of the Treasury is completely capable of assuring us the requirements that we have this year, in part perhaps because we are the only law enforcement agency that might see a budget increase this year.

I think if we talked about doubling the Service, we would have extraordinary requirements to meet on a one-time basis.

The requirements under the President's proposal today are able to be met under the existing circumstances in FLETC.

Mr. McCOLLUM. But if we doubled them or added 3,000 or something like that, you would have to phase in the additions.

Ms. SALE. It would necessarily have to be phased in; and I wouldn't recommend anything else, Mr. McCollum, for two reasons. One, we would not want to have to rush to hire people. We continue to be concerned about our screening processes and would want to be able to take the time that is necessary to screen candidates before they went into training and then to ensure that the training was sustained at the highest level that we could generate.

Mr. McCOLLUM. I want to ask you about that, because the National Border Patrol Council points out in its statement that "the Border Patrol experiences a great deal of difficulty in recruiting and retaining qualified employees. This is due to the fact that the requirements of the job are very demanding; transfer and promotional opportunities are very limited within the Border Patrol; and the pay is extremely low in comparison with similar law enforcement jobs."

So I have got questions like: Is the Border Patrol having great difficulty "recruiting and retaining qualified employees?"

Ms. SALE. We have been able to recruit to meet our requirements, since I have been with INS, which is 2½ years now, including the large, 200/300 officer recruitment that we have provided for.



You need to understand that because of the rigor with which we recruit and train people, we tend to recruit for one and a half or two times as many people as we ultimately require, given the fact that we do lose people through the physical fitness exam through—every candidate goes through a board interview which is held by officers from the Border Patrol to ensure that, in fact, they meet a personal interview process before they go into training.

I think 3 years ago our turnover rates were probably bordering on 25 percent. Today, our attrition is fewer than 5 percent. That is a combination of two things. We have gone to great lengths to modify our training program to provide for conversational Spanish, we have built a Spanish aptitude test, a language-learning aptitude test, into our recruiting, screening process, and I suspect that the economy has helped.

Mr. MCCOLLUM. All that sounds good, but I want to follow up with these questions which pertain to this Border Patrol Council comment. Is the compensation paid to Border Patrol agents “extremely low in comparison with similar law enforcement jobs?”

—Ms. SALE. I don’t think it is, not necessarily. I think if you look at grade structures, an FBI officer may be an average GS-12 or -13, and a Border Patrol journeyman level is an 11. That is a classification determination based on complexity of duties and the like and something that we constantly review, because it does warrant review, especially as the Border Patrol’s functions have become more complex over the years.

From a cash payment standpoint, the Border Patrol officer enjoys the benefits of locality pay, overtime provisions under the Federal law enforcement officers pay provisions, and other stipends that I think make it possible for us to match.

When we recruit, as an example, we don’t bring people in at the lowest pay level in the grade but, rather, at a high average pay level in order to avail ourselves of the flexibility in the pay structure to recruit the best people we can.

Mr. MCCOLLUM. All right. What about the opportunities for transfer and promotion? Are they limited within the Border Patrol?

Ms. SALE. They are somewhat constrained by our need requirements and by what is a problem, I think, for all executive agencies these days, which is the extraordinary cost of moving employees. We do see movement among the Patrol, and we go to great lengths to consider candidates’ requirements in promotions and the like.

You need to remember that most of our work is in the same place.

Mr. MCCOLLUM. Thank you very much.

Mr. MAZZOLI. The gentleman’s time has expired.

The gentleman from Illinois.

Mr. SANGMEISTER. I think just one question will maybe help me with my constituent mail a little bit.

A lot of people in my district, and I think others, just think that we have the U.S. Army that isn’t doing anything any more throughout this country in various camps and that all we have to do is bring them down to the border and line them up along there and help the Border Patrol, and we could solve a big problem down there. I would like to hear your response to that type of a statement or thought.



Ms. SALE. I am aware that that is, in fact, sort of a piece of the public sentiment that we are dealing with. There are two answers to that question.

One, we benefit from and enjoy the support of the National Guard in great measure, particularly along the southern border, in administrative, technical, and logistical support. They put up the fence, they put up the lights, they helped us build are facilities, they do radio work for us, they do watch work for us, provide intelligence opportunity for us, in some instances even help us with transportation requirements.

So part of the answer is, the defense establishment is, in fact, already assisting, principally under the authorities of the drug interdiction requirements, but they are helping us to a great extent.

The second part of the answer is that there are constitutional prohibitions against the Department of Defense exercising arrest and executive authorities against U.S. citizens. I think those are firmly founded on, good rationale, in addition to being the law, and we need to abide by those constitutional prohibitions and be very concerned about them.

Particularly in the context of this hearing, when we are talking about civil rights, when we are talking about the integrity of how we exercise law enforcement authorities, we would be very concerned that you can't just put soldiers on the border to enforce the immigration statutes without going to great lengths to train them and to prepare them to understand the sensitive nature of this work.

That is not to say they are not capable of it, but I think we would need to be very concerned about that, and there is a constitutional problem—posse—

Mr. MAZZOLI. Posse comitatus.

Ms. SALE [continuing]. Posse comitatus. Thank you Mr. Mazzoli.

Mr. MAZZOLI. My grade school Latin.

Ms. SALE. That is the term of art that says they are not allowed to do this.

Mr. SANGMEISTER. Then the additional money that supposedly will make it through the appropriation process and create this additional money—what is our appropriation, \$45 million?

Mr. MAZZOLI. The addition is \$45 million.

Mr. SANGMEISTER. Which will give you approximately how many additional officers out there?

Ms. SALE. The language of the President's proposal says up to 600.

We have gone through a rather elaborate and extensive force deployment exercise this summer so that we would be prepared should Congress act favorably on this.

Mr. SANGMEISTER. That was my question. In other words, you are anticipating this going, and you are already gearing up?

Ms. SALE. We have done a lot of preparatory work.

Mr. SANGMEISTER. Education procedures and all that?

Ms. SALE. Absolutely, so that if it happens, we can respond, effectively use the money, thank you, and respond to the Congress' direction at that point.

We have prepared all that is required to train these people on a scheduled basis; we have looked at deployment opportunities; we

have very, very conscientiously planned the budget out from an execution standpoint so that it isn't just manpower but it is equipment, technical support, and contractual support, to make sure that the officers that do go on the line—and we expect that it will be almost 600 additional people on the line, some by redeploying people, and some actual new additional recruits—that they will be as effective as possible and that we will be in a position to monitor them adequately.

Mr. SANGMEISTER. In the scope of things, of course, if you had your ultimate wish to have as many people as you want, and I suppose you could even use more people, but is this a meaningful amount of people that would be put into the system?

Ms. SALE. We feel strongly that this is, in fact, a very viable proposal, that it will give us an opportunity to get a handle on the places where we have the most vulnerability, and give us an opportunity to establish mobile components.

Part of the problem with border enforcement is that it is like an amoeba; you know, if you put a fence in front of the left-hand side, then it just sort of wiggles around and comes around the right-hand side. So we have gone to great lengths to propose deployment both of facilities and technology as well as officers under this amendment.

It is a wonderful opportunity, if this comes forward, for us to do some important and good things that would be mobile—so they would be mobile, so that we would be able to shift as the requirements shift, because we fully expect that whatever we do will change the behavior of the smuggler and the public that we are managing and that we will need to follow as well, or the thing won't be successful, and that is the genesis of the underlying assumptions for how we intend to deploy the resources, if they are approved, obviously.

Mr. SANGMEISTER. How do you evaluate the cooperation, if any, that you get from the Mexican authorities when you try to coordinate the problems? I mean, are they indifferent to the problems that you have, or do they say, "Yes, we understand this is has been happening, or that is happening, and we are trying to stop it on this end?" Or just what kind of cooperation do you get from their authorities?

Ms. SALE. I think the cooperation is far improved from what it might have been 10 years ago. Certainly under President Salinas, there has been an enormous emphasis on integrity of Mexican authorities and Mexican Government officials. He has worked very, very diligently to enhance the integrity of his inspections, customs, and law enforcement officials. We see that.

If you fly into Mexico City, there is a different attitude there. There has been the deployment of special forces, right now only in Tijuana, although we are hoping that it will also materialize in other parts of the border, something they call Grupo Beta, which is a special corps of law enforcement officers.

Gustavo de la Viña, our sector chief in San Diego, has worked very, very closely with this group. We have shared assets with them, lending them our radio support, so that we have communication that is immediate and together, and the joint efforts of that group with ours have resulted in that particular part of the border

in excess of a 60-percent drop in incidents of violence on the border. Many of those incidents were Mexican on Mexican, civilian on civilian, as it were—muggings, rapes, thefts, the like.

Of course, the difficulty is that if we on our side are in pursuit of someone and they cross the border, we are precluded from proceeding. What this Grupo Beta has been able to achieve in collaboration with our chief in San Diego, is a communication that says, "We are not going to be able to go any further, and there is a bad guy taking advantage of the border to get away with this bad behavior," and the Mexican authorities, in turn, respond.

I have a case in point of a wire that we got today on a case dated September 16 of this year in Calexico, which is right within the San Diego sector's jurisdiction. Agents responded to a call and observed subjects running south. Such subjects immediately began to hurl rocks against our Border Patrol agents. Agents retreated, radioed for Mexicali police support. Mexicali police responded and arrested four out of five individuals. The individuals were taken into custody, all Mexican officers were given our sincere appreciation for their rapid response.

Agents were advised that Captain Trendon, who I presume was the supervisor at the time, was supervising the unit and would proceed with this particular investigation.

That is only an example of the kind of thing that is happening today.

That is not to say that Mexican authorities don't still have very real concerns about the sovereignty of their nation, about making sure that we know whenever they think there is something we need to know. But I feel very strongly that we have a good working relationship and that things are on the mend in that regard, Mr. Sangmeister, and I thank you for letting me have a chance to put that in the record.

Mr. MAZZOLI. The gentleman's time has expired.

Let me just piggyback on what the gentleman has said and ask you, Ms. Sale—I am looking at the data on the Border Patrol. The gentleman has asked about that. These are June figures. Now they are outdated to some extent, but in June you have, for example, fiscal year 1993, 4,635 Border Patrol and the appropriations is \$361 million.

For fiscal year 1994—now this is June—for fiscal year 1994, it was going to go down by 200, not up by 6 but down by 200 to 4,479, for a figure of \$352 million.

The asterisk said, "Numbers represent the administration request," because President Clinton asked for a reduction in the Border Patrol, not an increase, which was not, I think, correct or appropriate budgeting. And then along comes the Hunter amendment, I guess, in part.

So can you fill me in. If the Duncan Hunter amendment winds up as part of the conference committee report and is passed, what will that do to your fiscal year 1994 numbers which, according to this schedule, were 4,479?

Ms. SALE. Fiscal year 1994? I don't happen to have the picture in front of me.

Mr. MAZZOLI. Well, I will give that to you. For fiscal year 1993, it showed 4,635.



Ms. SALE. That is right.

Mr. MAZZOLI. Fiscal year 1994, using the budget figures of the administration—and that is what the asterisks say—it goes from 4,635 to 4,479. The money goes from 361 to 352.

Ms. SALE. Those are the numbers that predate the President's budget amendment that was transmitted this summer.

Mr. MAZZOLI. All right.

Ms. SALE. Those numbers represent what was our initial pass-back under the President's early review of our budget back in February.

Mr. MAZZOLI. His modified early review came in there. What did it come in as?

Ms. SALE. He has since, in the wisdom of your ways, Mr. Mazzoli, and, in fact, in addition to the expedited exclusion proposals, the enhancements for preinspection overseas, the enhancements for the Asylum Officer Corps, which are coming out of the exams fee account, he has also provided for a \$45 million increase and up to 600 officers. We also think we will also be able to bring in administrative support for the patrol in addition to that.

That increase restores the \$7 million reduction to the base which would have resulted over a 2-year period in 200 fewer officers, and allows us to increase, we think, by at least an absolute 450 new additional officers and support staff to allow us to redeploy officers from support work into line work of almost another 200.

Mr. MAZZOLI. I don't want to take my colleague's time. Let me just kind of go back over this. That \$45 million you are talking about, is that Hunter's money, or is that the President's?

Ms. SALE. It is the President's money. Mr. Hunter's proposal was bigger, as I recall—\$60 million?

Mr. MAZZOLI. Was it \$50 million?

Ms. SALE. Sixty is the number I recall.

Mr. BECERRA. Sixty million dollars.

Ms. SALE. Thank you, Mr. Becerra. And then the President thought that \$45 million would make a good plan. So that is what we want.

Mr. MAZZOLI. OK. So then, instead of 4,479, which was the morning line, what is it going to be? It would be 4,479 plus 450?

Ms. SALE. That is right.

Mr. MAZZOLI. Plus support.

Ms. SALE. Plus support.

If you generally just say plus 600, you will be all right. And it is in excess of \$400 million in the appropriation line item for the Border Patrol.

Mr. MAZZOLI. Thank you.

The gentleman from Texas.

Mr. SMITH. Thank you, Mr. Chairman.

Ms. Sale, thank you for your testimony today as well.

Let me just follow up on the question of Border Patrol agents. You will be training anywhere from 450 to 600 additional Border Patrol agents, you expect. How long will it take you to train those agents? How long before they will actually be put in their positions?



Ms. SALE. It is obviously a sequenced effect, Mr. Smith. We have got a plan in place that says we will have hired all additional agents during this coming fiscal year.

Because we hire them in increments of classes, 400 and 100 at a time, depending on how many classes we can run, and they train for 17 weeks, they will not all be on the line with their badges exercising immigration authority until about 18 months from now, but they will all be on the line within an 18- or 20-month period.

Mr. SMITH. How long is the training process?

Ms. SALE. The residential training process is 17 weeks.

Mr. SMITH. So if we were to put the maximum number of agents possible on the border, you could process 100 how often? Every 17 weeks? Is that what you said?

Ms. SALE. We have 12 classes scheduled for this year. Classes average 48 candidates.

Mr. SMITH. Well, if you had the maximum number of classes and the maximum number of people in each class, how many could you train in any given year?

Ms. SALE. I don't want to give you an answer off the top of my head, Mr. Smith. I would like to provide one for the record. There are two constraints, obviously, instructors and facilities, as well as our desire to put good people through the system.

Mr. SMITH. I am talking about using what you have right now.

Ms. SALE. Using what we have right now, we are probably using every capacity that is available and putting 12 classes through in 1 year. That, for us, is a pretty good number.

Mr. SMITH. There are 40 in a class? Is that what you said?

Ms. SALE. Fifty in a class, on average.

Mr. SMITH. Fifty. So you could process 600 a year.

Ms. SALE. That is right.

Mr. SMITH. So, in other words, if we wanted to increase the number of Border Patrol agents to 1,200, it would take us 2 years to do that.

Ms. SALE. That is exactly right. And you need to remember, obviously, that we are also having to deal with whatever attrition there is. Little as it is, we need to make sure that we keep our strength up.

Mr. SMITH. Right.

Let me go back to the question of civil rights violations. Considering the education and training that is now being provided and that you described in detail a few minutes ago, do you feel that INS is making a good-faith effort to avoid these civil rights violations?

Ms. SALE. I think we are, Mr. Smith. I would acknowledge that inservice training is a vulnerability for us. We are providing inservice training and supervisory training. Especially in the Border Patrol actually, we are ahead of the line there, but you could always do more. I think we have gone to special efforts at the local level and at the Academy to ensure that we are doing that.

Mr. SMITH. Do you feel that the complaints about civil rights violations have been processed adequately?

Ms. SALE. Yes. I think we have got enormously complicated and rigorous procedures to process them.

Mr. SMITH. Do you feel that the investigations have been conducted adequately?

Ms. SALE. I think there is always room for improvement on investigations. Most of the investigations are conducted by our trained investigative officers or by the IG.

Mr. SMITH. I know there is room for improvement, but do you feel they are being conducted adequately under current circumstances?

Ms. SALE. We have had concerns about the consistency of the quality of the investigations, and Mr. Chase has taken on the additional responsibility of reviewing all investigations to ensure consistency in their quality.

Mr. SMITH. As far as you know, they are being conducted adequately?

Ms. SALE. Yes, sir.

Mr. SMITH. And then, do you feel that the agents have been disciplined adequately as well?

Ms. SALE. We have a continuum of disciplines, which is guidance from the Department of Justice. It runs the gamut of a counseling memo to firing people.

Mr. SMITH. Right, you mentioned examples of those. But do you feel that the agents who have been disciplined have been disciplined adequately?

Ms. SALE. We think we are doing that, yes. We are providing for consistent response to the local officials through our labor relations staff at regions, and that staff, in turn, meets monthly to review cases, to provide for consistency among them.

Mr. SMITH. You mentioned a few minutes ago, I think, that there were still five cases under investigation of civil rights violations. What was the time period that you were talking about? I think you said something like there were 580,000 apprehensions, and of those complaints issued during that time, it boiled down to 5 that were currently under active investigation.

Ms. SALE. I am not sure, Mr. Smith, but you may be reacting to the data that came out of Customs. That is my recollection.

Mr. BAISH. Those are the five cases that span the time of over a year-and-a-half.

Mr. SMITH. Five cases over a year-and-a-half?

Mr. BAISH. Right.

Mr. SMITH. And how many apprehensions approximately were there during that year-and-a-half period?

Mr. BAISH. Apprehensions in what regard, sir? You mean how many allegations?

Mr. SMITH. Yes.

Mr. BAISH. There were 17.

Mr. SMITH. How many contacts were there between Border Patrol agents and illegal aliens during that period of time?

Mr. BAISH. I am Customs, Mr. Smith.

Mr. SMITH. Customs, OK. Pardon me.

Mr. MAZZOLI. There were 570 million.

Mr. BAISH. Yes, 570 million people crossed the border and were processed by Customs and Immigration.

Mr. SMITH. Do you know of any other law enforcement agency—is there any other agency anywhere that has that good of a track record?

Mr. BAISH. I doubt it.

Mr. SMITH. OK. One last question for Ms. Sale.

How many Border Patrol agents or Customs officials were injured, were victims of violence themselves, during that same period of time?

Ms. SALE. During this year, the Border Patrol has had 140 incidents of violence against officers, including, or affecting 170 officers. Sometimes the violence occurs against a team or a group, and we have had 16 incidents of violence against inspectors.

Mr. SMITH. How are those cases handled? What do you do about the individual that allegedly committed the violence against the Border Patrol agent?

Ms. SALE. Depending on the incident, we refer it to local authorities, or we pursue the case with our own.

Mr. SMITH. How many times in all those instances were sanctions actually taken against the individual who committed the violence?

Ms. SALE. I don't have the answer to that question, Mr. Smith; I would have to provide it.

Mr. SMITH. Thank you, Mr. Chairman.

[The information follows:]

There were 61 assaults perpetrated against Border Patrol Agents in San Diego Sector and 21 assaults in El Paso Sector in 1993. Thirty-three (33) of the assailants were presented for prosecution to the FBI. An average of 1 per cent of all assailants presented for prosecution and actually convicted and sentenced for "Assault on a Federal Officer". The remaining 99 per cent have historically been allowed to plead guilty to the lesser misdemeanor charge of illegal entry.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman.

And thank you to all the panelists for being here ready to answer questions; and actually, Ms. Sale, let me thank you for responding to Americas Watch, the report that they submitted and the detailed response that you provided to them.

Ms. SALE. Thank you, sir.

Mr. BECERRA. And I commend you also.

Mr. MAZZOLI. Would the gentleman yield in? With your permission, I would like to put that in the record, because I did have a chance to read it, and I don't know that that was done technically, but this will be made a part of the record.

Ms. SALE. Thank you, Mr. Mazzoli.

Mr. BECERRA. Thank you, Mr. Chairman.

[The letter to Mr. Bell follows:]



U.S. Department of Justice  
Immigration and Naturalization Service

Office of the Commissioner

425 Eye Street N.W.  
Washington, D.C. 20536

SEP 15 1993

Mr. Peter D. Bell  
Chair  
America's Watch  
485 Fifth Avenue  
New York, N.Y. 10017-6104

Dear Mr. Bell:

This is in response to the America's Watch report dated May 13 regarding alleged human rights abuses along the U.S./Mexico border.

Let me start by saying that the men and women of the Immigration and Naturalization Service (INS) are committed to promoting and protecting the human rights of all individuals and to enforcing the immigration laws in a fair and humane manner. You have my assurance that swift action will be taken against any employee who violates these principles.

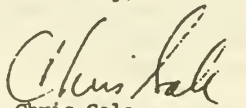
At my request, appropriate members of the INS Executive Team reviewed and evaluated each of the recommendations enumerated in the report and found that most pertain to regulations and policies already in place. However, we acknowledge that room for improvement exists in certain areas and agreed with some of the recommendations found in the report.

I have addressed each of the recommendations as reflected on the enclosure. It is important to note that our responses incorporate the language of the revised Service Firearms Policy and the Non-Deadly Force Policy. The revised Service Firearms Policy is pending negotiations with our Union Councils, and an implementation plan is under development for the Non-Deadly Force Policy.

Please note that recommendations #23, 24, 32, and 33 require follow-up action which the Office of Enforcement is in the process of pursuing.

I appreciate your interest in this matter and hope this response addresses your concerns.

Sincerely,

  
Chris Sale  
Acting Commissioner

Enclosure



# AMERICA'S WATCH REPORT RECOMMENDATIONS

1. INS needs to redirect its mission to emphasize the promotion and protection of human rights in the fulfillment of its responsibility to enforce U.S. immigration laws.

*INS is committed to promoting and protecting the human rights of all individuals. A review of the comments that follow, as well as our pending revised policies, will reemphasize our pledge to enforce the immigration laws in a fair and humane manner and to protect the rights of every human being.*

2. INS must make clear to its personnel that failure to respect the legally protected human rights of any person will be punished.

*On July 13, 1993, the INS Commissioner sent the attached memorandum to all District Directors and Chief Patrol Agents emphasizing INS' commitment to protecting the human rights of all persons and to taking swift action against any employee who violates this principle.*

*Additionally, INS stands ready to work closely with Mexico. As an example, recently INS officials (including the Border Patrol) attended a one-day meeting in Mexico City to discuss our mutual concerns, among them the establishment of closer coordination to ensure protection of both the Law enforcement officers enforcing our respective laws and those suspected of violating those laws. A follow-up Department of State meeting has taken place in Washington, DC. Prior to these most recent meetings with the Government of Mexico, the Border Patrol has been involved in discussions with the Government of Mexico Human Rights Commission members. The Border Patrol has provided a training syllabus and has invited the Government of Mexico to examine our training facility, review the curriculum, as well as participate in the training course in presentations in Mexican culture. The Border Patrol has recently completed, in conjunction with the Department of Justice Community Relations Service Division, specialized human relations training in El Paso, Texas.*

3. Agents should, as far as possible, apply non-violent means before resorting to the use of force or firearms.

*All of the INS law enforcement handbooks emphasize that the use of physical force or violence may only be used in self-defense, in defense of another person, or to such an extent as is absolutely necessary in making an arrest or preventing an escape. The handbooks also clearly state that the use of excessive force will not be tolerated. In addition, these principles are taught to immigration officers during basic immigration law enforcement training.*

INS has taken steps to solidify and more clearly define its policies in the development of three policy directives. The High-Speed Vehicle Pursuit Policy, issued on July 21, 1992; the Non-Deadly Force Policy now pending development of an implementation plan; and a strengthened INS Firearms Policy pending negotiations with the Union Councils.

Section 6 of the revised INS Firearms Policy states that the authority to carry firearms carries with it an obligation and responsibility to exercise discipline, restraint, and good judgement in their use. The policy also states that firearms will not be used to intimidate or coerce.

4. Agents should employ force only as necessary to attain a legitimate objective and only in proportion to the importance of that objective.

As stated in section 3 of the INS Non-Deadly Force Policy, immigration officers shall always use the minimum non-deadly force necessary to accomplish the officer's mission and shall escalate to a higher level of non-deadly force only when such higher level of force is warranted by the actions, apparent intentions, and apparent capabilities of the suspect, prisoner, or assailant.

Section 5 of the current INS Firearms Policy states that a firearm may be discharged only as a last resort when the officer reasonably believes that there is the threat of imminent danger of loss of life or grievous bodily harm to himself or to another person.

Section 6 of the revised INS Firearms Policy states that firearms may be discharged when the officer reasonably believes that the person possesses the means, the immediate intent, and the opportunity of causing death or grievous bodily harm upon the officer or another person, and the use of deadly force is the only appropriate action.

5. Agents should minimize damage and injury, and respect and preserve human life.

The INS policy on the use of force is based on the "force continuum" model taught at the Federal Law Enforcement Training Center (FLETC). From options on this continuum, officers are instructed to employ only the minimum level of force necessary to control the situation.

Section 6 of the revised INS Firearms Policy states that the authority to carry firearms carries with it an obligation and responsibility to exercise discipline, restraint, and good judgement in their use.

On July 21, 1992, the INS Commissioner issued a restrictive policy for vehicle pursuits that, as a result of high-speed or

hazardous moving violations, could lead to serious injury or death. Only Border Patrol Agents have been trained in the new policy; however, the Office of Investigations is developing written vehicle pursuit guidelines for special agents which, once approved, will be effective upon completion of commensurate training. The Commissioner's policy statement complies with both the vehicular pursuit policy statement of the International Association of Chiefs of Police and the National Institute of Justice policy entitled, "Restrictive Policies for High-Speed Police Pursuits."

6. Agents should ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.

Section 8 of the INS Non-Deadly Force Policy states that any suspect who claims injury or appears to be injured must receive proper and timely medical attention prior to executing the incident reporting requirements found in the Policy.

In reference to shooting incidents, section 12 of the revised INS Firearms Policy states that depending on the circumstances of the incident, supervisors may personally respond to the scene, or direct that an investigative team respond to the scene and take appropriate actions to ensure that all possible assistance is rendered to injured persons.

In addition, first aid/CPR is part of the basic immigration law enforcement training curriculum at FLETC.

7. Agents should ensure that relatives or close friends of the injured or affected persons are notified at the earliest possible moment.

When INS agents are involved in a case of, or otherwise discover, an injured illegal entrant, the officer will attempt to contact an immediate family member. Persons accompanying the injured person are notified and questioned as to their relation to the injured. The injured person, if able, is given the opportunity to personally notify a relative or questioned as to whom they would like notified. When local notification is not possible, the local or nearest Consulate's Office will be asked to assist with the notification.

8. Firearms should be reserved only for the protection of agents or third persons from imminent threat of death.

Both the revised INS Firearms Policy and the proposed General Arrest and Firearms Authority Regulations restrict the use of deadly force to only those situations when an immigration officer has reasonable grounds to believe that such force is necessary to protect the officer or other persons from the present danger of death or serious bodily harm. In addition, the firearms courses taught at FLETC incorporate judgement

*shooting utilising the Firearms Training System (FATS).*

9. Agents should not brandish their firearms in the course of everyday enforcement.

*Section 6 of the revised INS Firearms Policy requires immigration officers to act in a professional manner and therefore, not to carelessly or unnecessarily display firearms. Section 7 of the policy states that immigration officers shall draw their handgun only when they have reason to expect that it may be used. Section 34 further restricts immigration officers by stating that they cannot point a weapon, loaded or unloaded, at anyone or anything, unless intending to discharge the weapon.*

10. Agents should never shoot a fleeing suspect unless absolutely necessary to preserve the lives of others.

*Pursuant to section 7 of the revised INS Firearms Policy, firearms shall not be discharged for the purpose of preventing a person from fleeing from a crime scene, avoiding arrest, or escaping from custody.*

11. Agents should never fire warning shots.

*Section 7 of the revised INS Firearms Policy states that firearms shall not be discharged as a warning shot.*

12. Weapons inspections should be thorough and consistent so that immigration law enforcement agencies are not dependent solely upon agents' reports regarding firearms incidents.

*Section 23 of the revised INS Firearms Policy requires Firearms Instructors or Range Officers to inspect each immigration officer's handgun at each quarterly qualification and record the results on a standard form. The policy also requires Firearms Instructors to inspect the handgun of each immigration officer who enters on duty and to conduct a similar inspection when a handgun is issued, exchanged, or turned in. The policy requires that appropriate action shall be taken immediately when the handgun does not meet INS standards. The policy further states that immigration officers failing to care for INS-issued firearms in accordance with training provided by the Training Division may be subject to disciplinary action.*

13. Agents should be strictly prohibited from carrying non-issue weapons when they are on duty.

*Pursuant to sections 6 and 16 of the revised INS Firearms Policy, authorization to carry handguns during duty or non-duty hours shall be limited specifically to those INS-approved revolvers and semi-automatic pistols, by job category.*



14. Nonlethal devices (i.e. stun guns, gas guns, nonlethal projectiles, and vehicle stopping devices) should be used in preference to firearms and other lethal weapons.

*The INS use of force policy is based on the "force continuum" model which instructs officers to use only the minimum level of force necessary to control the situation. Section 4 of the INS Non-Deadly Force Policy lists the authorized non-deadly force devices and requires immigration officers to use the minimum non-deadly force necessary to accomplish the officer's mission and to escalate to a higher level of non-deadly force only when such higher level of force is warranted by the actions, apparent intentions, and apparent capabilities of the suspect, prisoner, or assailant.*

15. All equipment carried by agents should be used only for its intended purposes (e.g. flashlights and hand held radios should not be used as weapons).

*Section 9 of the Non-Deadly Force Policy requires immigration officers to be trained and certified in the use of the non-deadly force device(s) they are authorized to carry. The policy authorizes the use of the following non-deadly force devices: expandable side-handle baton; nonexpandable side-handle baton; conventional straight baton for use only within detention facilities; collapsible steel baton; and electronic defense module for use only when transporting persons arrested or detained. The Border Patrol recently implemented the side-handle baton program as a non-deadly force option, and all Border Patrol Agents will be trained and certified in its use.*

16. When injury or death is caused by the use of force or ~~firearms~~, agents should report the incident immediately to their superiors.

*Section 11 of the revised INS Firearms Policy states that any immigration officer who participates in or observes a reportable shooting incident must report the incident to a supervisor within one hour of the incident unless physically unable or otherwise impaired.*

*Section 8 of the INS Non-Deadly Force Policy stipulates that any incident involving the use of non-deadly force that results in injury or suspected injury must be reported orally within one hour of the incident to the supervisor on-duty, followed by a written report submitted to the supervisor on-duty by the end of the employee's work shift.*

17. Agents should never use force, threats of force, or arbitrary detention as forms of extrajudicial punishment.

*All INS law enforcement policies prohibit abuse of authority, including the use of excessive force. The Commissioner's memorandum of July 13, 1993 reiterates this principle and*

*stipulates that violations thereof will be dealt with swiftly and severely.*

18. A fully empowered and independent Review Board, outside INS, should be created to investigate all complaints of abuse directed at INS.

*INS has a proposal under consideration to create a Citizens Advisory Panel (CAP) for the purpose of: (1) accepting and reviewing civilian complaints of abuse against INS employees, and (2) reviewing the systems and procedures in INS for handling such complaints. Simultaneously, several INS Border Patrol Sectors and Districts have established or participated in local community relations boards.*

19. INS should make public the names of all agents alleged to have been involved in cases of serious abuse, unless there is specific evidence that doing so would jeopardize the safety of the agents involved or hinder the investigation. If these special circumstances are temporary, the names should be released when the circumstances no longer exist.

*It is appropriate to release names at the time of indictment or arrest. The current policy of not releasing the names of agents alleged to have been involved in cases of serious abuse continues for sound reasons. While the agent's case is under investigation, release of names could serve to prejudice the case. If the agent is exonerated of the allegation or, if the allegation proves to be unsubstantiated or, there is no trial resulting from the allegation, no useful purpose is served in releasing the agent's name other than to make the agent and his or her family the targets of cruel innuendo and harassment in the community where they reside.*

20. No agent involved in such an incident should be reinstated without first receiving stress counseling.

*Section 12 of the revised INS Firearms Policy states that when an immigration officer's use of a firearm, either on or off duty, results in death or serious injury, the officer shall be provided with psychological counseling in accordance with the INS Employee Assistance Program, implemented January 25, 1990. The program uses a national network of police psychologists for specialized counseling in traumatic incident cases.*

21. Procedures should be established to enable undocumented immigrants to file complaints against agents without fear of reprisal.

*The policies and procedures of the Office of Professional Responsibility and the Office of the Inspector General of the Department of Justice currently have established procedures to protect the identities of complainants and witnesses from disclosure to INS personnel.*

22. The public should be effectively informed of its right to file complaints against INS abuse.

*The INS follows an established process for the handling and investigation of complaints involving allegations of misconduct and other matters. The Office of the Inspector General (OIG) and the Civil Rights Division of the Federal Bureau of Investigation (FBI) are tasked with investigating allegations of abuse and civil rights violations committed by all Department of Justice agencies. Service employees are bound by regulation to report any allegation of misconduct. Failure to do so may result in disciplinary action, including removal.*

*In an effort to assist individuals with complaints, the Border Patrol has taken additional steps to facilitate the complaint process, such as developing a standard public complaint form to be available at traffic checks, police departments, and ports of entry; Public Service Announcements; and bumper stickers on the rear of marked patrol vehicles with the local Border Patrol telephone number.*

23. All INS personnel should be fully familiar with the complaint process.

*All INS employees will be instructed in the complaint process.*

24. Easy-to-understand complaint forms should be supplied and an explanation of the complaint procedures, in the languages of the immigrant community, should be displayed prominently in all INS offices.

*Large posters in English and Spanish will be designed that provide the phone number and/or address for lodging a complaint against an INS employee. The posters will be placed in prime INS locations nationwide.*

25. A 24-hour, toll free phone number, staffed by persons who speak all languages of the immigrant community, should be established for the purpose of receiving complaints against agents of the INS.

*All INS offices are prepared to receive complaints of misconduct against INS employees. INS offices are staffed with employees who can communicate in the predominant language of the immigrant community they serve. Anyone wishing to file a complaint may do so at any INS office or by contacting any INS employee. Complaints made to INS will be referred to the Office of the Inspector General (OIG) or the INS Office of Internal Audit for action. Complaints may also be made directly to the OIG.*

*Although not all INS offices remain open 24 hours, each Border Patrol Sector headquarters has a 24-hour communications center*

and the phone number is published in local phone directories.

This recommendation will also be referred to the OIG for consideration.

26. All persons who file complaints should be informed when their complaints are received, given periodic status reports, and provided access to an appeal process.

INS agrees that complainants should be informed as to the status of their complaint. The INS Office of Internal Audit is developing a system which will provide case status to complainants upon request. INS disagrees with the suggestion that an appeals process be provided in that other well known avenues of relief are available including petitioning a State or Federal Court. This suggestion will also be referred to the OIG for consideration.

27. The appeal process should be public and transparent, except in unusual cases in which specific evidence is presented as to why the Review Board should do otherwise.

See response to recommendation #26.

28. Under no circumstances should reprisals be taken against undocumented immigrants who file complaints, nor against agents who denounce violations to the Review Board.

INS agrees. Current and proposed rules support this position.

29. Cases in which reprisals are alleged should be referred to the Review Board and treated like other complaints of abuse.

See response to recommendation #18.

30. No information obtained regarding the immigration status of witnesses to alleged violations committed by agents which is obtained in connection with investigations into such abuses, should be used against such witnesses in immigration proceedings.

INS agrees if the allegation is heinous and is supported by other facts. However, although the information from key witnesses will not be used against them, this does not mean that ultimately they will not be placed in deportation proceedings.

31. All agents who regularly come into contact with the public should be in uniform and clearly identifiable by name.

INS agrees that immigration law enforcement officers who have contact with members of the public day in, day out should be in uniform. A name tag is part of the official INS uniform.



32. All INS vehicles should bear large, fluorescent, reflective two or three-digit identification numbers.

*INS agrees that vehicles used on a regular basis to patrol the border should display identification numbers. All new Border Patrol vehicles will bear visible reflective numbers.*

33. INS should eliminate all strip and body cavity searches unless there is probable cause to suspect that a person possesses contraband. Strip and body cavity searches should never be used to intimidate, harass, or humiliate the person being searched. Whenever possible, strip and body cavity searches should be conducted by third parties, rather than the arresting agent.

*INS is currently reviewing its policy on strip and body cavity searches.*

34. All agents should be required to undergo human rights training to increase their understanding of the basic rights of the individuals with whom they are in contact daily.

*Basic immigration law enforcement training encompasses a complete course of training that includes constitutional law, civil rights, the Miranda warning, and human relations.*

Mr. BECERRA. And I believe some time in, July—mid-July—you sent a letter out to all the folks in the INS, asking them to rededicate themselves to the highest standards, and I applaud you for doing that as the person on top of the agency.

Let me go into a few things. First, I would like to make a comment on some of the things my colleagues have said, and I agree with them that, given the number of contacts made by both Customs and INS, the number of complaints that we have registered is obviously very, very small—no doubt. I think that is a reflection that most of the employees of both agencies do tremendous work, again, under very tough circumstances. But we do have records of abuse.

Ms. SALE. That is right.

Mr. BECERRA. And we do have convictions and records that there are people who have abused, although small as they may be. I think there are a number of reasons, obviously. A number of people are very concerned about reporting instances of abuse. Others just prefer not to because it makes no sense. If you are trying to cross the border and you have no documentation, why make an allegation of abuse? You are not going to go testify in court if you can't come into this country to begin with. And oftentimes, of course, we find that the process itself is oftentimes not the best to try to adjudicate that particular individual's case.

I also would mention that the LAPD was held in the highest regard until a couple of years ago when we found out that Mr. Rodney King happened to be caught on videotape being abused by some individuals, and as a result we found that we had to rededicate ourselves within L.A., to try to upgrade the standards within our own police force.

Let me go into the issue of training and also investigations. I suspect you are familiar with the auditor general of the Department of Justice's report back in March within your own parent agency. Let me quote what he said in his statement back on March 30, 1993.

Well, first let me ask, Ms. Sale. You mentioned that you feel that the INS is doing a satisfactory job of trying to police itself, its own investigations. For how long would you say that the INS has been doing a decent job?

Ms. SALE. I feel far more comfortable since we centralized the function, Mr. Becerra.

Mr. BECERRA. And that was back on?

Ms. SALE. February of this year.

Mr. BECERRA. OK.

And as far as the training of INS personnel, how long have you felt comfortable with the training processes within the INS for its personnel?

Ms. SALE. Essentially since I had enough time to fully understand it, which is probably within 6 months of my being there.

Mr. BECERRA. That would have been when?

Ms. SALE. Eighteen months ago at this point, I would assume.

Mr. BECERRA. OK.

Ms. SALE. I went to some lengths to review the training curriculum, to meet with FLETC staff independent of meeting with INS staff at the Center, and then, furthermore, to meet with and ask

for reviews of some of our training procedures, with particular regard to validation and reliability criteria, from staff, senior staff, at the Office of Personnel Management, who have, in fact, attested and given me some confidence about the reliability with which, and validity with which, we are designing our curriculum and using the training.

I had two concerns: Obviously, the fact that the training needed to put out the best officers that we could possibly put out; secondly, that because it is a pass/fail, go/no go—if you don't pass training, you are not hired, you don't work for the INS—I was very concerned that we would meet a standard of validity and job-relatedness in that regard, I have assurances from senior personnel at the Office of Personnel Management that our procedures are technically correct and accurate and among the best in the country.

Mr. BECERRA. Do you feel satisfied with the screening process you have for the folks who are applying to work with the INS?

Ms. SALE. I think we are doing the maximum we can under the constraints of title V of the Civil Service Act.

We have asked the Office of Personnel Management to prepare an examination that would assist us in looking at suitability prior to putting people in, and I expect to have the results of that within a year. They will develop such an examination very cautiously and carefully.

Mr. BECERRA. But you do at this point feel satisfied with the screening process? Or are you waiting for the report?

Ms. SALE. We put 400 people through a screening process and a training process last year that resulted in 300 officers passing an exam and getting online. We have had minimal turnover and loss; we have had no incidents or problems in that class.

There was one candidate who was in training for whom the security investigation had not been completed because we were, frankly, trying to meet a commitment to get a certain number of officers on the line timely. They would not leave the training until the security investigation was done. When information about that officer's security background came forward, he was dismissed.

Mr. BECERRA. Well, let me read into the record what was said by the Inspector General of the Department of Justice, Mr. Richard Hankinson, back on March 30, 1993, with regard to employee screening.

"Although not alone in the Department of Justice, INS has suffered serious problems with employee background investigations. The problem was first reported as a material weakness in 1989 as a result of a special audit of the INS." He goes on to say, "The degree and seriousness of INS failings were found during an April 1992 OIG inspection of Justice-wide background security. The figures were dramatic. Of the 5,559 INS employs possessing top secret or secret classifications, 4,205, 76 percent, of the employees, were in violation of Department security background regulations. These regulations require employees reinvestigations at least every 5 years. Of those employees in violation, 55 percent had not been reinvestigated in over 10 years and 35 percent had not been reinvestigated in over 15. Additionally, many of the background investigations which contained derogatory information were never adjudicated," it goes on to say. "This included employees in highly

sensitive positions. For example, an INS law enforcement officer who tested positive for marijuana at the time he entered on duty in 1986 had an allegation in his investigative report that he had possibly sold drugs. However, he was still employed in 1991 and had served on a drug task force."

"Another INS enforcement officer was described in his investigative report dated 1985 as being a 'walking timebomb, a pathological liar, someone who lacked judgment and was unfit for law enforcement.' He was involved in two firearm incidents before his federal employment. However, he was hired, has a career status, and was still employed at the time of our inspection."

I would say again that obviously it is difficult for the Commissioner to be aware of everything that is going on, but that does cause some pause for concern among some of us.

Let me go on to the inspection.

Ms. SALE. I really think I would like to put something in the record in response to that, Mr. Becerra.

Mr. BECERRA. Please.

Ms. SALE. I have three reactions. One, I hope that in the year 2000 there won't be a Commissioner responding to findings of a 1983 and 1985 IG report, although that may not be the case.

Mr. BECERRA. 1993.

Ms. SALE. 1993 on reinvestigations. The entire Department of Justice, unfortunately, had fallen behind in its own policy to reinvestigate employees every 5 years.

Congress, in its wisdom, appropriated extraordinary amounts of money for that purpose. We hired a special security officer and centralized that function in INS 2 years ago, and, to my knowledge, although I don't have the data with me, we are on target in a "get well" arena.

We have also proven to the Department of Justice that we are capable of adjudicating problem cases ourselves because of the extraordinary hiring of Ken Lopez, who happens to be the Director of Security for INS, a senior career official with ample governmental experience in places like NASA, the Department of State, and HHS, and are now adjudicating cases.

Part of what would happen is, a problem case such as the one cited would come up; we were not authorized to take action until a determination had been made centrally at the Department of Justice about that person's suitability. Unfortunately, cases piled up.

Mr. BECERRA. You are saying during the screening process you could not take a look at the investigative report on someone's background and decide not to hire?

Ms. SALE. You need to make a distinction between the initial hire in which, in fact, we are making those distinctions and have resolved an old problem in which one region in INS didn't do that timely but have now become current in all initial hires.

After a person is hired at the Department of Justice, there is a policy requirement—it is a matter of procedure—that every 5 years their suitability records, their investigation, be updated. It is that updating that the IG refers to had not been occurring timely, had not been occurring anywhere. We are now current on those updates and are rigorously pursuing those issues.



We are also doing more than that. When someone comes up for promotion into a supervisory or managerial position in INS, if their suitability is not current, if they have not filled out the forms, they are not considered for that job. I mean that is how rigorously we have taken that mandate.

I am sorry about what happened in the eighties. We are trying to make amends, and I hope that we will be able to prove to you that things are better today and will be better in the future.

Mr. MAZZOLI. The gentleman's time has expired. We will come back for a second round.

Mr. BECERRA. Thank you.

Mr. MAZZOLI. And I gather—Mr. Baish, you were nodding a couple of times. So essentially what Ms. Sale was saying not only meets with your approval but basically is what Customs does too, the periodic evaluations and what-have-you?

Mr. BAISH. That is right, Mr. Chairman. A lot of what Ms. Sale was saying applies to Customs also. We do periodic reinvestigations of our employees, and we have a very rigorous investigation that includes new hires with full financial and background checks. We have been able over the past 3 years to use contractors to do that type of reinvestigation, and it has proven to be very satisfactory. It has freed up our own Internal Affairs agents to do that, do the investigations, the complaints, and integrity violations.

Mr. MAZZOLI. Good. Thank you very much.

The gentleman from California.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

I apologize for coming in a little late. Sometimes when you have three committees going at the same time, I am able to cover two at the same time, but I haven't figured out how to do three yet.

Mr. MAZZOLI. Bilocation and trilocation.

Mr. GALLEGLY. In any event, I do have a statement I would like to ask be placed into the record, and in the interests of time I won't read it.

Mr. MAZZOLI. Without objection, so ordered.

[The prepared statement of Mr. Gallegly follows:]

PREPARED STATEMENT OF HON. ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF CALIFORNIA

First, let me thank the Chairman for holding these oversight hearings on the operations of the Border Patrol.

Today, we are to examine a number of complaints that have been leveled against the Border Patrol for alleged abuse and look into the possibility of installing an independent enforcement review board to oversee the Border Patrol agents and look into the complaints of abuse that they are alleged to have committed in the course of their duties.

I would like to urge a word of caution to my colleagues. I have no doubt that there have been instances of abuse, including the occasional unnecessarily rough handling of aliens by Border Patrol agents. But I would like to remind everyone that the Border Patrol has a tremendous responsibility of patrolling our borders and keeping out illegal aliens. With something less than 4,000 agents, the Patrol is supposed to provide border security along 1,500 miles of our border with Mexico. Within the San Diego sector alone, thousands of aliens attempt to cross illegally every day. One has only to watch that sector by night to see what these agents are up against. I have seen them being overwhelmed by groups of taunting illegals who alternately hide and escape across the breach created when the agents are forced to repel another group at another part of the sector. It is an exasperating, sometimes perilous, often frustrating job for so few agents.

I have called for nearly doubling the size of the Border Patrol and have introduced legislation to this effect, as have others. I have even proposed recruiting qualified military personnel facing imminent discharges due to defense cutbacks to strengthen the Border Patrol. Of course, more manpower is not the only answer. They must be better equipped and trained and prepared to deal more effectively with large groups of aliens. The Congress must also remove the incentives for illegal immigration, by cracking down on document fraud and cutting off payments of federal benefits to persons not legally qualified to receive them.

This does not excuse any abuses, but it does help to explain them. Before we hastily condemn the undisciplined actions of a small number of agents in an overworked, undermanned force, let us remember what a difficult job the Border Patrol has to stop the flood of illegal immigration, without the tools and resources needed to handle such a major task.

Thank you, Mr. Chairman.

Mr. GALLEGLY. But I would like to just ask one quick question of Ms. Sale.

First of all, I really appreciate her dedication and her candid way of dealing with us every time she is over here. We seem to have been working very well together all year, and I look forward to that continuing.

One of the questions that I have, and I am not sure that there is really an answer to it, relates to the fact that we have a President who has gone to the Nation and made what appears to be a strong statement regarding his commitment to dealing with the issue of illegal immigration.

However, there seems to be a contradiction when he makes a request for an actual reduction in Border Patrol of 200 rather than the status quo or an increase, when we know that right now trying to stop the flow of illegal immigration—with the number of Border Patrol agents we have—would be like trying to catch a B-1 bomber with a butterfly net. So that being the case, I am a little perplexed as to why he would request the 200-person reduction in the Border Patrol.

Do you have an answer for that?

Ms. SALE. The President's initial budget review, which was executed in February of this year, provided for no net increase in the Border Patrol and assigned to INS our pro rata share of across-the-board reductions that were part of his policy directive to reduce employment in the Federal service and to reduce bureaucracy.

It was that across-the-board reduction that would have netted over this year and next year a 200 employment reduction in the Border Patrol.

Since then, the President has, in fact, had a second opportunity to review the obligations and work load inherent in the INS and has proposed an amendment this summer, I am sure you are aware, Mr. Gallegly. To accompany his proposals for expedited exclusion proceedings, there were associated with those proposals—and criminal sanctions, additional criminal sanctions for INS violations—there was a budget amendment proposed. That budget amendment sustained and increased our commitments to preinspection overseas in the airport inspection process, increased staffing for the asylum officer corps both to recognize the backlog there and to enhance our ability to do the expedited exclusion—excuse me—asylum interviews, and finally proposed a \$45 million increase and up to 600 additional staff for the Border Patrol.

So today, at least, the President's position is a plus-\$45 million and plus-600 staff for the Border Patrol, as distinct from his coming in position which was an across-the-board reduction.

Mr. GALLEGLY. I appreciate that response.

While it was a reduction yesterday, or the day before yesterday, and an increase today, I would hope that you would continue to use your influence over there so that tomorrow—we hope—he will continue to be working toward building our Border Patrol.

I applaud him for his interest in cutting bureaucracy. I think there are a lot of places in the bureaucracy where we can make significant cuts, but when it gets down to the young men and women trying to protect our international borders, I think we need a great deal of support there, and I appreciate your help.

Ms. SALE. Thank you, Mr. Gallegly. There is no doubt in my mind about this committee's support for the work that INS and Customs do. There is also no doubt in my mind at this point about the fact that in Janet Reno we have an extraordinary individual with an extraordinary amount of commitment to our pursuing our obligations in a legal and professional and ethical way and with the resources we need to do that and that the President has also demonstrated his commitment to that. So I hope that it is sustained.

Mr. GALLEGLY. Thank you very much, Ms. Sale.

Mr. Chairman, I would yield back.

Mr. MAZZOLI. Thank you.

Let me, pose a few wrap-up questions, Ms. Sale, and then yield to the gentleman from California.

On page 15 of your statement, the summation is that the Department of Justice feels that we ought not to act on the gentleman's bill until we see how this citizens advisory panel will work along with the other steps which you have implemented and will implement.

I have looked at my record. I don't see any indication from the Department of Justice. I would ask when you get back to the office today if you could check with Ms. Reno or people around her. We would appreciate that actually.

Ms. SALE. My understanding is that a bill report is due you, and it is in draft and going through a clearance process.

Mr. MAZZOLI. Thank you very much. We just would appreciate that.

On to a couple of other issues. We have a vote, but we will be able to finish. At least, I will be able to finish mine and any further, and then we could switch to the next panel.

I am advised that a very disconcerting increase in the number of apparently Mexican nationals or people crossing the Mexican border are now seeking asylum. The figures reported in one of the southern California newspapers have shot up from 1992 when maybe 600 applied for asylum to 1993 when 5,500 have; in the month of July well over a thousand did.

Furthermore, apparently some of the people coming in are not going back by virtue of the repatriation but, in fact, are asking to be deported, which clogs up the system and takes more time.

We are wrestling with the whole question of asylum, the President's bill, the bill that I have put in, the bill the gentleman from California has put in even yesterday. I wonder if you can give us



sort of a thumbnail sketch of this, because obviously this could completely collapse the system. I think the system is virtually in collapse already, despite what the President has put in and efforts in those directions.

We are going to be very short of people and very short of detention space and very much behind the curve of getting this backlog worked on, and here we have the potential for tens of thousands, hundreds of thousands of people to then—and I understand that 50 percent of these are considered to be nonfrivolous claims; 50 percent of the people who are coming asking for asylum are considered to be filing nonfrivolous claim, which, if I understand correctly, gives them a chance to get the work permits, get the ID cards, get everything that would let them melt into the system, and then they may or may not show up, and we have seen that trick that they have pulled before.

So the question is, can you tell me how accurate or inaccurate that is?

Ms. SALE. The frivolous standard, Mr. Mazzoli, as I know you know, is practically not a standard. Consequently, on the basis of a frivolous determination, we very, very infrequently will discount someone's application and still have a legal obligation to explain why.

With regard to Mexican asylum claims, we have seen a marked and very alarming increase in claims for asylum on behalf of Mexican nationals; and you are correct, up to a thousand in the last month.

There is a clear indication that the majority of these are all coming out of the same postal mark in California, a place called Industry City near Anaheim. I have never seen it, Mr. Becerra. Perhaps you are familiar with it. It is apparently next to Commerce City.

I have asked our Director of Investigations to deliver to me, in fact by today, a proposal on how we would go after this from a fraudulent document standpoint, because we have at least symptomatic evidence to indicate that this is being produced on a word processor with some regularity and that these cases are part of a scam.

Mr. MAZZOLI. I appreciate that, but that is exactly the problem with the current system. They can scam the system. They can job this system right and left, and that is exactly what they are doing, and the word gets out that you can't come in at JFK any more because of whatever they are doing in Long Island, so they start coming in at the southern border, which completely eliminates any ability we have.

Also, in answer to the gentleman from Illinois, who has left, there was a question about the degree of cooperation with the Mexican authorities, and I am happy that there is a higher degree, and perhaps that is true at El Paso and everything.

But it does appear to me that we are not taking advantage of NAFTA in any way as we should to extricate, to leverage the Government of Mexico into doing some things that I think ought to be done.

A later witness today will suggest that people ought to be repatriated deep into their home state or into somewhere else but not just dropped across the border. But apparently a lot of them are



now asking for deportation, which means that they may prevent that from happening anyway.

So the question that I would ask is, do you think NAFTA gives us any opportunity to do a little bit of heavy lifting on what ought to be a cross-border cooperative efforts?

Ms. SALE. I am reluctant to speak as a member of a NAFTA negotiating team because I am not, and there are intricacies there far beyond what I am briefed on.

I think long-term, if NAFTA serves to equalize the economic disparity along the border, that long-term it would help us. I also think that we will be very hard pressed to ever obtain any kind of commitment from the Mexican Government that their citizens don't have a sovereign right to travel.

The issue of internal repatriation is one we need to consider. I think that.

Mr. MAZZOLI. Yes. My time has expired.

The gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman.

I would request that we leave the record open for a reasonable period of time to allow panelists to respond to further questions.

Mr. MAZZOLI. Oh sure.

Ms. SALE. Absolutely.

Mr. MAZZOLI. Absolutely.

Mr. BECERRA. And perhaps also for other individuals. I know Mr. Werner Patterson from the Department of Justice was someone we had requested to come speak since he has oversight responsibilities for advisory panels, and maybe we can make sure we get testimony from him, or perhaps ask him some questions.

Mr. MAZZOLI. Sure.

Mr. BECERRA. Ms. Sale, let me make a comment here, because this is my first year here and I obviously think that we need to do things in the realm of immigration not just with Border Patrol but other things as well.

In the times that you have been here, I have been very impressed with your presentations and your candor as well. Oftentimes, you are the one that bears the brunt of questions, and it is not because, obviously, we go after you personally but because you are the Commissioner.

So I want to make sure that I make that preliminary statement here again, because I do have the utmost respect for you and the responses you give, but I also want to make sure that we are able to elicit information that will help us all make decisions.

Ms. SALE. Thank you.

Mr. BECERRA. Let me try to ask some questions almost in rapid fire because, again, we are so short on time because of the vote. And if you don't have the answers, perhaps you can provide them.

Do you know what percentage of the Border Patrol's budget is spent on investigations of misconduct?

Ms. SALE. We don't keep budget numbers that way. We know that 10 percent of the Border Patrol is spent of supervisory and administrative functions, and I would expect it is fewer than 1 percent, Mr. Becerra.

Doing that kind of investigation is an extra function that is assigned to officers on a case-by-case basis. But it is not a lot of money.

[The information follows:]

Complaints and allegations of misconduct are immediately reported to the Office of the Inspector General (OIG). The OIG refers to the Civil Rights Division of the Department of Justice cases involving civil rights violations. Where criminal laws may have been violated, the matter is referred to the appropriate investigative and prosecutive authority. Cases concerning unsubstantiated criminal violations and administrative violations are referred to the INS Office of Internal Audit.

Allegations returned to the Service are controlled by the INS Office of Internal Audit. That office may refer complaints to the affected Border Patrol Sector for management inquiry. In those cases, a report is prepared and returned to the Office of Internal Audit for oversight.

There is no budget line item specifically dedicated to OIA investigations. However, several Border Patrol Sectors, such as San Diego and El Paso, have taken steps to ensure that the quality and integrity of investigations are not jeopardized by inconsistencies in investigative techniques. These sectors have consolidated their resources into one or two agents whose sole responsibility is to investigate allegations of administrative violations.

San Diego Sector has two GS-12 Supervisory Border Patrol Agents permanently assigned to conduct OIA inquiries. El Paso Sector dedicates one GS-12 Supervisory Border Patrol Agent to perform the same functions in west Texas and New Mexico. An estimated \$163,000 is spent annually by the two Sectors on the salaries and benefits of these employees.

Mr. BECERRA. Maybe then I could follow up with some further questions to try to probe to see if we can try to narrow down how much. It might be impossible.

Ms. SALE. We would be happy to do at least a sample in one or two offices, and that might give us a basis on which to extrapolate a number.

Mr. BECERRA. I appreciate that. We will see what we can work on.

Next, how many civil suits are pending against the INS for officer misconduct, are you aware?

Ms. SALE. We will have to provide for the record, sir.

Mr. BECERRA. OK.

[The information follows:]

Currently, the Office of the General Counsel for the INS does not have a data base in place that would accurately track the number of civil suits pending against INS officers accused of misconduct. However, in an attempt to address the question presented, a manual search of the case files maintained in that office was conducted. Cases that concern alleged acts of violence committed by Border Patrol Agents were extrapolated by referencing requests for Department of Justice representation submitted by the agents named in the corresponding actions. The case files indicate that there are, currently, 26 cases in various stages of litigation involving Border Patrol Agents accused of violent acts.

Mr. BECERRA. Could you provide the subcommittee with the total amounts of money paid in settlements or as judgments of abuse complaints brought against the INS and Border Patrol over the last, say, 5 years?

Ms. SALE. We will be happy to provide it.

Mr. BECERRA. Great.

[The information follows:]

These figures are not maintained in the Office of the General Counsel. Once a civil action of this nature is brought against a Border Patrol Agent, the agent in question submits a request for Department of Justice representation to that office. If the individual is determined to have been acting within the scope of his/her employment when the alleged incident occurred and it appears to be in the best inter-

est of the government to provide representation, a recommendation for representation is forwarded to the Civil Division's Torts Branch. If the case is litigated by the Torts Branch, information concerning settlements or judgments is maintained in their files.

In the event the recommendation is that the Torts Branch not provide representation, the individual secures counsel from the private sector and the Office of the General Counsel, as the result, would not have access to the information solicited by the instant question.

Mr. BECERRA. Let me, again, because I know we are running out of time, and rather than ask questions, let me again read something into the record from, again, the March 30, 1993, report by the Inspector General of the Department of Justice with regard to inspections.

On page 19, toward the bottom paragraph, the Inspector General states, "On February 1989, Special Audit of the Immigration and Naturalization Service found that 42 percent of immigration inspectors performing inspection duties had not received the 14-week formal training course at Glynco, GA. Some, about one-third, were temporary employees who would never receive the training. Others were waiting to attend the course but still performing inspection duties in the interim."

Ms. SALE. Those things are true. We have been running a special set of training programs for other than permanent inspectors, for our seasonal officers and are better than half of the way through making them whole, to be perfectly honest, and we are also on target in making sure that everyone has been trained.

We do local training on inspectors and then send them to the Academy, and I think we are halfway there on the backlog. That program has grown so fast that it has been hard to keep up with it.

Mr. BECERRA. The reason I point it out is because if we do, in fact, have additional dollars to hire additional staff, we want to make sure not only that we are doing good employee screening, we are doing good investigations, but that we do everything else that is needed.

One last thing, Mr. Chairman. It will take about a minute. That is, on page 22 of the Inspector General's report regarding employee discipline—this is somewhat in response to what you have mentioned, and, again, as I understand, this is all information based on previous years, not to date.

Ms. SALE. That is right.

Mr. BECERRA. It says, "We do not have very useful data at this point on how the INS disciplines its employees in response to our investigations or those of others. This is a persistent belief among those of our staff with experience in the areas that the INS's treatment of misconduct is spotty." They give certain examples, and I won't read those into the record. They are on page 23.

Mr. MAZZOLI. We really have to go to make that vote.

Mr. BECERRA. Yes.

Mr. MAZZOLI. Let me make mention of one thing. Any information the gentleman wishes, I hope that you can provide him quickly.

Ms. SALE. We will do our utmost.

Mr. MAZZOLI. Secondly, to mention that the gentleman is making a tremendous contribution to the subcommittee. But I think we



would have been appalled by what we saw 10 years ago when we would have hearings like this: The paucity of funding, the fact that the Immigration Service was really the stepchild of the Justice Department.

So, little by little, our subcommittee—and the gentleman is going to be a part of it—has already moved much in the direction of giving INS the money it needs, the staff it needs, the professionalism it needs to have, the stature and status that it needs to have. So I think that in that setting we now have made a big move.

We have much more to do, and we will do a lot of it because of the gentleman's observations, but we certainly have come a long way, I think, in that setting, and we are making success.

So we thank you very much.

Mr. BECERRA. Thank you all.

Ms. SALE. Thank you both.

Mr. MAZZOLI. And the panel will come back in just a few minutes after the vote.

[Recess.]

Mr. MAZZOLI. The subcommittee will come to order.

Our next panel is composed of Ms. Billet-Roumell, legislative liaison of the National Treasury Employees Union—and I would ask you, is it "Billay"?

Ms. BILLET-ROUMELL. It is "Billet."

Mr. MAZZOLI. Thank you.

And Mr. T.J. Bonner, president of the National Border Patrol Council of the AFGE, AFL-CIO.

OK, Ms. Billet-Roumell, maybe you could begin.

#### **STATEMENT OF DEBBIE BILLET-ROUMELL, LEGISLATIVE LIAISON, NATIONAL TREASURY EMPLOYEES UNION**

Ms. BILLET-ROUMELL. Thank you. Mr. Chairman, thank you for holding this hearing on H.R. 2119, a bill to establish an immigration enforcement review commission.

My name is Debbie Billet-Roumell, and I ask that the complete statement of Robert Tobias be included in the record.

As the exclusive representative for U.S. Customs employees, we are extremely concerned about this proposed legislation. Let me assure you that we do not come before you today in support of civil rights abuses at our borders. We find reports of rapes and beatings of any persons trying to enter this country abhorrent.

However, H.R. 2119, as it pertains to Customs employees, is not the answer to these problems. We believe that Customs employees are improperly included in this legislation and their inclusion will have a chilling effect on appropriate law enforcement behavior at our borders.

Moreover, we believe that the legislation is grossly unfair, deprives employees of fundamental due process rights, and is an unnecessary use of government resources.

The Customs Service and INS are the principal U.S. agencies providing inspection and clearance at U.S. border crossings. Border Patrol employees of the INS are responsible for protecting all the territory between ports of entry against illegal immigration and drug smuggling. On the other hand, the Customs Service only de-



employs Customs inspectors at the port of entry. The Customs Service has no role, parallel to that of the Border Patrol of INS.

It is important to recognize this distinction. The recent attention given to civil right abuses at the border has been focused exclusively on incidents occurring between ports of entry. The Customs Service jurisdiction is strictly limited to ports of entry. Any incidents occurring between ports of entry involve Border Patrol personnel of the INS and not Customs personnel.

The Customs inspector is consistently surrounded by other personnel, including supervisory personnel, in performing their duties. This environment is entirely different from that of a Border Patrol agent who carries out his or her duties away from the general public.

If Customs inspectors are included in this legislation, we believe it will have a chilling effect on drug interdiction at the borders. Customs inspectors are at the forefront of the Nation's efforts to interdict and prevent the smuggling of drugs and other contraband into this country.

If H.R. 2119 was enacted into law, an inspector would be afraid to carry out his or her job functions. Under the proposed legislation, an inspector could have an anonymous complaint filed against him or her. Passengers accused of drug smuggling would have every reason to file a complaint against an inspector. The Immigration Review Board could recommend to the Customs Service that the inspector be terminated without any due process hearing.

The risks for a Customs inspector associated with detaining or searching a passenger suspected of drug smuggling would be so great the protections so small, it would be hard to imagine inspectors vigorously carrying out their jobs. The long-term effects would be obvious: Less drug interdiction at the border.

The Customs Service already has procedures in place for handling complaints from the general public. Responsibility for the investigations of alleged misconduct on the part of Customs employees rests with the Office of Organizational Effectiveness. This Office does a preliminary review of the matter and either sends it to the designated regional commissioner if it is administrative in nature, or it is sent to the Office of Internal Affairs.

Each Customs region has its own internal office which handles serious complaints against employees. Internal Affairs has trained professional investigators who investigate complaints and reports on their findings and recommendations. When necessary, they refer matters to the Attorney General.

NTEU has other concerns with this legislation. The proposed legislation speaks to providing due process and constitutional rights for Service employees, yet the entire legislation is devoid of such guarantees. There are no parameters of how serious or small the complaint can be. An anonymous complaint can be filed against an employee. In such a case, an employee will never have the opportunity to confront his or her accuser. Even if the complainant chooses to reveal his or her identity, there is no guarantee for a hearing. Without a hearing, there is simply no due process.

A complaint may subject an employee to discipline, and even if the complaint is not used against an employee, under the proposed legislation it can be used against him or her as part of the early

warning program. This program provides for periodic review of all complaints regardless of any findings on the merits.

In summary, NTEU has serious concerns with the proposed legislation. We do not believe that Customs inspectors should be covered under this legislation, and we believe it will have a chilling effect on drug interdiction at our borders.

We also believe that the enactment of an enforcement review board is unnecessary for Customs Service personnel because they already have adequate procedures in play for complaints.

Finally, we are alarmed by the lack of employee protections in this bill.

Thank you for allowing us the opportunity to share our views on this matter. We would be happy to answer any questions.

Mr. MAZZOLI. Thank you very much for excellent testimony.

[The prepared statement of Mr. Tobias follows:]

PREPARED STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Mr. Chairman and Members of this Subcommittee, thank you for holding this hearing on H.R. 2119, a bill to establish an Immigration Enforcement Review Commission. As the exclusive representative for U.S. Customs Service employees, I am extremely concerned about this proposed legislation. I appreciate the opportunity to share our views with you on this important matter.

Let me assure you that I do not come before you today in support of civil rights abuses at our borders. I find reports of rapes and beatings of any persons trying to enter this country abhorrent. However, H.R. 2119, as it pertains to Customs employees, is not the answer to these problems. We believe that Customs employees are improperly included in this legislation and their inclusion will have a chilling effect on appropriate law enforcement behavior at our borders. Moreover, we believe that the legislation is grossly unfair, deprives employees of fundamental due process rights and is an unnecessary use of government resources.

The Customs Service and INS are the principal U.S. agencies providing inspection and clearance at U.S. border crossings. The Immigration and Naturalization Service has two types of employees at our borders. Border Patrol employees of the INS are responsible for protecting all the territory between ports of entry against illegal immigration and drug smuggling. Immigration Inspectors' basic mission is the handling of the entry of persons at ports of entry. On the other hand, the Customs Service only deploys Customs Inspectors at the port of entry. The Customs Service has no role parallel to the border Patrol of INS. Customs Inspectors are responsible for the entry of persons and merchandise at the ports of entry.

It is important to recognize this distinction. The recent attention given to civil rights abuses at the borders has been focused exclusively on incidents occurring between ports of entry. The Customs Service's jurisdiction is strictly limited to ports of entry. Any incidents occurring between ports of entry involve border patrol personnel of the INS and not Customs personnel. The work environment of the Border Patrol Agent and the Customs Inspector are so different that we believe there should be different procedures to prevent abuses.

Both agencies employ Inspectors to protect the ports of entry with primary and secondary investigations. At land border ports of entry both agencies have "cross-designated" each other's inspectors to conduct primary inspections. At airports, the primary inspection is conducted by an INS Inspector. In either case the primary inspector must make a decision whether to "release or refer" the passenger. If they "release" the passenger, the passenger is free to go into the United States; if they "refer" the passenger, the passenger must undergo a more detailed examination by either Customs or INS who separately staff "secondary inspection" areas located near the primary lanes.

It is important to be aware that both the primary and portions of the secondary examinations are conducted in a contained environment open to public viewing. The Customs Inspector is consistently surrounded by other personnel including supervisory personnel. This environment is entirely different from that of a Border Patrol Agent who carries out his/her duties away from the general public.

Although Customs Inspectors may conduct searches on passengers as part of the secondary examinations, there are various procedures they must follow. For exam-



ple, in New York at J.F.K. airport, all searches must be approved by a Senior Inspector or a Supervisory Inspector and a form must be filled out prior to the search. In El Paso, Texas after an Inspector establishes that a search should be conducted, it is done by a member of the same sex and there is always an accompanying Inspector of the same sex. Many of the airports have cameras in the search rooms. Customs Inspectors work environment is so unlike Border Patrol Agents that they could not be responsible for the types of crimes which this legislation seeks to curb.

If Customs Inspectors are included in this legislation, we believe it will have a chilling effect on drug interdiction at the borders. Customs Inspectors and Canine Enforcement Officers are at the forefront of the nation's efforts to interdict and prevent the smuggling of drugs and other contraband into this country. As Federal Officers they face multiple challenges resulting in confrontations with leading criminals in the drug war, organized crime figures, the potential for terrorist attacks, and increasingly sophisticated white collar criminals. They must be prepared to seek out, detect, seize, arrest, and detain persons and/or contraband in violation of Customs and related laws.

If H.R. 2119 was enacted into law, an Inspector would be afraid to carry out his/her job functions. Under the proposed legislation an Inspector could have an anonymous complaint filed against him/her. Passengers accused of drug smuggling would have every reason to file a complaint against an Inspector. The Immigration Review Board could recommend to the Customs Service that the Inspector be terminated, without any due process hearing. The risks for a Customs Inspector associated with detaining or searching a passenger suspected of drug smuggling would be so great and the protections so small, it would be hard to imagine Inspectors vigorously carrying out their jobs. The long term effects would be obvious—less drug interdiction at the border.

The creation of an Immigration Enforcement Review Commission would not only impede the Customs Service's ability to accomplish its mission, but it is also unnecessary. The Customs Service already has procedures in place for handling complaints from the general public. Responsibility for the investigation of alleged misconduct on the part of Customs employees rests with the Associate Commissioner, Office of Organizational Effectiveness. This Office does a preliminary review of the matter and either sends it to the designated Regional Commissioner if it is administrative in nature or it is sent to the Office of Internal Affairs.

Each Customs Region has its own Internal Affairs Office which handles serious complaints against employees. Internal Affairs has trained professional investigators who investigate complaints and report on their findings and recommendations. When necessary they refer matters to the Attorney General. The NTEU and the U.S. Customs Service have negotiated procedures in their Collective Bargaining Agreement for handling Internal Affairs investigations, including the right to union representation during an interview and the right to be informed if the investigation could lead to a criminal conviction.

Supervisors are trained to handle complaints from the public. For example, in El Paso there are Standard Operating Procedures for handling complaints. The supervisor is instructed to try to defuse or resolve the complaint. If the supervisor is unable to resolve the complaint, the supervisor is to provide preprinted instructions advising of the District's mailing address for passengers to file a complaint. The supervisor is also instructed to record all potential complaint producing incidents, including statements from personnel who witnessed the incidents. A copy of the incident is forwarded to the Chief Inspector. All incidents are entered into TECS-II a computer system which enables the Customs Service to have a permanent electronic file to keep track of future occurrences.

The Collective Bargaining Agreement between Customs and NTEU also has an Article titled "Employee Conduct and Discipline". This Article incorporates by reference the Customs Code of Conduct, various factors to be considered when administering discipline, and due process procedures for employees when the Service wishes to suspend or terminate an employee including an extensive grievance procedure culminating in a binding arbitration hearing. It simply does not make sense to put another review panel in place when such a mechanism already exists for Customs employees and it has the necessary employee protections.

The Customs Service also has a uniform Table of Penalties. It lists forty-four separate offenses and provides specific penalties for first and second offenses. Furthermore, the Customs Service Code of Conduct describes in 39 pages the standards of conduct required of all U.S. Customs Service employees. Every Customs employee is provided a copy of the document.

NTEU has other concerns with the legislation. The proposed legislation speaks to providing due process and constitutional rights for Service employees, yet the entire legislation is devoid of such guarantees. There are no parameters of how serious or

small the complaint can be. An anonymous complaint can be filed against an employee. In such a case, an employee will never have the opportunity to confront his/her accuser. Even if the complainant chooses to reveal his/her identity, there is no guarantee for a hearing. Without a hearing, there simply is no due process. NTEU believes every complaint filed against an employee is serious and should lead to a hearing. A complaint may subject an employee to discipline; and even if the complaint is not used against an employee immediately, under the proposed legislation, it can be used against him/her as part of the "Early Warning Program." This program provides for periodic review of all complaints, regardless of any findings on the merits.

The bill fails to provide that exonerated employees should have their records expunged. The bill provides for the Panel to create a Table of Penalties. The Customs Service has already established such a Table. There is no right for an employee to have a representative at any of the investigations in the proposed legislation. There are no legal standards for complaints. Nor are there any sanctions for citizens who make malicious or frivolous complaints.

In summary, NTEU has serious concerns with the proposed legislation. We do not believe that Customs Inspectors should be covered under this legislation and we believe it will have a chilling effect on drug enforcement at the borders. We also believe that the enactment of an Enforcement Review Board is unnecessary for Customs Service Personnel because they already have adequate procedures in place for complaints. Finally, we are alarmed by the lack of employee protections in this bill.

Thank you for allowing us the opportunity to share our views on this matter. We would be happy to answer any questions.

Mr. MAZZOLI. Mr. Bonner.

**STATEMENT OF T.J. BONNER, NATIONAL PRESIDENT,  
NATIONAL BORDER PATROL COUNCIL AFGE, AFL-CIO**

Mr. BONNER. Thank you, Mr. Chairman, for the opportunity to present the views of the front-line employees of the Border Patrol concerning the important issues under consideration today.

The U.S. Border Patrol is charged with the overwhelming task of preventing illegal immigration into the United States. It is often a thankless and dangerous job. For every 17,000 arrests made by Border Patrol agents, only one complaint is received. It is significant that these are physical arrests where persons are deprived of liberty, as opposed to just a cursory inspection as occurs at the ports of entry. This is a remarkably low ratio that is unmatched by any other law enforcement agency in the country.

All complaints of abuse are thoroughly investigated, but most are determined to be unfounded. This does not indicate a flaw in the investigative process but, rather, a lack of foundation for many of the allegations.

In almost all cases where physical force is employed by Border Patrol agents, it is done in self-defense or in the defense of others.

In the few cases where Border Patrol agents engage in abusive behavior, there is no doubt that the offenders should be dealt with harshly as there is no justification for such actions.

However, to conclude that the Border Patrol engages in systematic abuses of human rights because of improper actions of a few renegade employees would be grossly inaccurate and unfair. Almost without exception, Border Patrol agents enforce our Nation's immigration laws in a fair, humane, and compassionate manner. Many acts of heroism and compassion, small and large, are performed by Border Patrol agents on a daily basis but are rarely publicized.

The call for civilian oversight of the operations of the INS and Customs Service is unwarranted and unwise. While the National Border Patrol Council endorses the concept of citizen advisory pan-



els, it cannot support the creation of a civilian review commission, especially as envisioned by the Immigration Enforcement Review Commission Act.

This legislative proposal has a number of major flaws. To cite but a few, it would preclude any person with recent law enforcement experience from serving on the commission in any capacity, depriving the commission of vital perspectives and placing it in an adversarial role, ensuring a high level of distrust by employees and ultimately the failure of the system. It would also duplicate existing employee reporting requirements and place an absurd requirement on employees to report rumors of allegations of misconduct.

The proposed legislation would also ignore basic employee rights and protections guaranteed under the Civil Service Reform Act as well as those secured through collective bargaining.

Civil servants who are treated like second-class citizens cannot be expected to provide first-class treatment to the people they encounter in the course of their employment.

There is no question that the current system is lacking in several important respects. Rather than replacing it with a flawed system, however, the National Border Patrol Council recommends repairing the current system by taking the following relatively simple actions, all of which can be achieved administratively without the need for legislation.

First, guarantee and honor the due process rights of all parties involved in the complaint process.

Second, speed up the investigative process.

Third, keep all parties involved in the investigative process informed of the results.

Finally, remove the overly broad discretion currently afforded to managers in the imposition of discipline.

The adoption of the recommended changes to the current system would be far more effective than the creation of a separate system. A civilian review commission of the nature proposed in H.R. 2119 would be counterproductive and should be rejected.

I would like to say a few words about the operations of the Border Patrol also, as they are adversely impacted by low manpower, insufficient and outdated equipment, and poor leadership.

The Border Patrol has difficulties recruiting and retaining qualified employees because of the demanding requirements of the job, the lack of transfer and promotional opportunities, and the low pay in comparison with similar law enforcement agencies. The journeyman level of the Border Patrol is GS-9. Only about 25 percent of all journeymen agents are GS-11 senior Border Patrol agents.

Although the National Border Patrol Council has urged the INS on many occasions to upgrade the work force, it has resisted. Likewise, transfers and promotions to nonsupervisory positions over the past 5 years have been stagnant.

The management of INS has also wasted millions of tax dollars litigating against its employees over matters where it has no chance of prevailing. In the past decade, over \$7 million in interest alone has been disbursed in back pay settlements of Fair Labor Standards Act claims filed by Border Patrol employees.

Rather than heeding the advice of the National Performance Review to engage in cooperative efforts with the unions, the manage-

ment of the INS continues to expend countless millions of dollars in senseless attempts to deny employees benefits and rights that other Federal agencies routinely grant. This has caused employee morale and confidence in the leadership of the agency to steadily decline.

Incompetent leadership at all levels continues to plague the INS. The mistakes and poor policy decisions of the previous administrations are being perpetuated by the acting leaders, all of whom were appointed by the departing administration.

The INS is a vessel adrift in a sea of confusion, spun by changing political winds and tossed about by the waves of public sentiment. Strong leadership is essential for the transformation of the INS into an efficient agency that is able to meet the challenges of today and tomorrow.

While the National Border Patrol Council extends its best wishes to the incoming INS Commissioner, it is not overly optimistic that changes in a few top positions will cure the ills of the INS, as the entire bureaucracy is deeply entrenched in a culture of incompetence as a result of decades of management promotion practices that are steeped in favoritism and totally devoid of merit.

This concludes my remarks. I would be happy to answer any questions you might have.

Mr. MAZZOLI. Thank you both very much.

[The prepared statement of Mr. Bonner follows:]

PREPARED STATEMENT OF T.J. BONNER, NATIONAL PRESIDENT, NATIONAL BORDER PATROL COUNCIL, AFGE, AFL-CIO

The primary mission of the U.S. Border Patrol is to prevent illegal immigration into the United States. It is a daunting and overwhelming task. The millions of people who attempt to illegally cross our nation's borders annually outnumber the five thousand officers of the Border Patrol by an incredible margin. It is not unusual for one or two officers to be confronted by vast groups of undocumented migrants, sometimes numbering one hundred or more.

The job of a Border Patrol agent is fraught with danger. Armed drug smugglers and bandits who prey on undocumented migrants abound at the board. Numerous officers have lost their lives and other have been seriously wounded in armed encounters with these criminals. Gangs of youths frequently hurl large rocks at Border Patrol agents, inflicting serious physical harm. The unfortunate victims of these attacks carry constant reminders of such encounters in the form of steel plates in their skulls, sensory loss, and physical and emotional scars. Physical assaults against Boarder Patrol agents are also commonplace.

Notwithstanding the aforementioned perils, the overwhelming majority of people encountered by the Boarder Patrol are not violent. Unfortunately, it is usually impossible to differentiate between criminals with violent intent and harmless individuals until the last moment. This places Border Patrol agents in very vulnerable and dangerous situations, forcing them to act with extreme caution in all circumstances. Given this atmosphere, it is nothing short of remarkable that only one arrest out of seventeen thousand results in an allegation of abuse. No other law enforcement agency in the country even comes close to such a low ratio.

All complaints of abuse by Boarder Patrol agents are thoroughly investigated by the Department of Justice, the Immigration and Naturalization Service, or by both agencies. Any perception that these agencies are not interested in investigating such allegations is simply not true. The fact that the majority of such complaints are determined to be unfounded does not indicate a lack of interest by the investigating agencies, but rather a lack of foundation for many of the allegations. The most likely cause for the large number of unsubstantiated complaints is a high percentage of false accusations made in hopes of obtaining temporary visas to remain in the United States pending the disposition of the allegations. Not surprisingly, the majority of those who come forward with complaints refuse to swear to them under oath, probably fearful of the penalty for false declarations under oath. The overabundance



of groundless complaints unfortunately serves to taint the credibility of those making legitimate complaints.

The number of substantiated cases of physical abuse by Border Patrol agents is far lower than the already low ratio of complaints to arrests. In the overwhelming majority of cases where physical force is employed by Border Patrol agents, it is done in self-defense or in the defense of others. In the few cases where Border Patrol agents engage in abusive behavior, there is no doubt that the offenders should be dealt with harshly, as is there is no justification for such actions. However, to conclude that the Border Patrol engages in systematic abuses of human rights because of the improper actions of a few renegade employees would be grossly inaccurate and unfair. Border Patrol agents are not heartless robots. They are human beings, no more perfect or imperfect than any other class of people. They are active members of their communities. They eat in the same restaurants, go to the same churches, and send their children to the same schools as everyone else in the community. Almost without exception, they enforce our nation's immigration laws in a fair, humane and compassionate manner. Their many acts of heroism and compassion, small and large, performed on a daily basis, are rarely publicized. Border Patrol agents have rescued undocumented migrants from raging flood waters, reunited lost family members, fed hungry undocumented migrants with money from their own pockets, freed undocumented migrants being held for ransom, assisted undocumented migrants in securing wages owed by unscrupulous employers, provided shelter and warmth for undocumented migrants exposed to the elements, and performed other acts of kindness and heroism too numerous to mention.

The call for Immigration Enforcement Review Commission to oversee the operations of the Immigration and Naturalization Service and Customs Service is both unwarranted and unwise. Although far from perfect, the system currently in place offers far better oversight of these agencies than a civilian review commission could ever hope to provide. While the National Border Patrol Council strongly recommends close cooperation between law enforcement agencies and the communities they serve, and endorses the concept of citizen *advisory* panels, it cannot support the creation of a civilian review commission, especially one laden with the imprudent provisions contained in H.R. 2119. The adoption of this legislation would only serve to increase tensions between the Federal law enforcement agencies responsible for enforcing immigration laws and the communities they serve.

For example, under the Immigration Enforcement Review Commission Act, employment by the I&NS or Customs Service within the preceding five years or employment by any law enforcement agency within the previous year would disqualify an individual from employment in any capacity with the Review Commission. The automatic exclusion of the individuals with the most knowledge about the unique conditions under which the employees of the Immigration and Naturalization Service and Customs Service operate is a serious flaw that would instantly place the Review Commission in an adversarial role, ensuring a high level of distrust by employees, and ultimately, its failure.

The proposed legislation would also require I&NS and Customs personnel to report all unreasonable use of force incidents, *whether witnessed or not*, to the Review Commission within 24 hours. The portion of this requirement that compels employees to promptly report witnessed violations of human rights is duplicative, as employees are already required to report such matters to their own agencies. The requirement to report *unwitnessed* and *unsubstantiated* allegations is totally absurd, and best left to gossip columnists and publishers of sensational tabloids. Likewise, the absolute power granted to the Review Commission to promulgate regulations requiring employees to report any other violations of operating procedures could lead to needless paperwork and procedures that would actually decrease the efficiency of the I&NS and Customs Service. Moreover, the current lack of effective protections for whistleblowers would expose employees to reprisals for following the directives of the Review Commission.

The National Border Patrol Council is extremely concerned by the provision of the Immigration Enforcement Review Commission Act that would compel employees to cooperate fully with the Review Commission, subject only to the protections afforded by the Constitution. This provision of the proposed legislation would effectively negate employee rights granted by the Civil Service Reform Act, as well as those secured through collective bargaining. Civil servants who are treated like second-class citizens cannot be expected to provide first-class treatment to the people they encounter in the course of their employment. Any evidence of possible criminal wrongdoing uncovered through the Review Commission's investigations would be turned over to Federal or State authorities for prosecution. This is sharply contrasted by the provision of the proposed legislation that specifically precludes the use of evidence against undocumented migrants that is gathered as part of a complaint, in-

vestigation, or hearing before the Review Commission in any proceeding under the Immigration and Nationality Act.

The provision in the legislation for automatic recommendations of training, counseling, or other actions based upon repeated complaints, *whether verified or not*, carries the potential for abuse, and could subject employees to unwarranted actions and harassment.

Finally, the funding for the Review Commission would be taken from the budget of the Offices of the Inspector General for the Department of Justice and the Department of the Treasury, effectively eliminating those offices.

The motivation behind the proposal to enhance the effectiveness of the oversight of the law enforcement agencies that deal with illegal immigration is understandable. The current system is clearly lacking in several important respects, most notably in the area of informing the public about the status of investigations and disciplinary actions imposed as a result thereof. Substantiated complaints indeed result in harsh discipline, including removal from employment. The failure to publicize the outcome of investigations undoubtedly results in public mistrust of the system. Rather than replacing it with a system that almost guarantees the miscarriage of justice, however, the National Border Patrol Council recommends repairing it by taking the following actions, all of which can be achieved administratively, without the need for legislation:

Guarantee and honor the due process rights of *all* parties involved in the complaint process.

Speed up the investigative process without sacrificing due process rights.

Keep *all* parties involved in the investigative process, including the employee against whom the complaint is made, informed of the results thereof. Presently, accused employees remain in doubt about the disposition of a complaint for years. The stress of having career-threatening allegations hanging over an employee's head for such a prolonged period is tremendous.

Revamp the Department of Justice Table of Offenses and Penalties to remove the overly broad discretion currently afforded to managers. The typical range of penalties for the exact same offense ranges from an official reprimand to removal. Placing employees on clear notice of the consequences of their actions would discourage misconduct by erasing any doubt concerning the effects of such actions. Under the current system, employees know that the rules are not always applied evenly, and that there is a chance they will not receive the discipline warranted by their misconduct.

In summary, the extremely low ratio of complaints to arrests is evidence of the professionalism of the U.S. Border Patrol. The relatively few allegations of abuse are taken very seriously and thoroughly investigated. While the current system of investigating and correcting allegations of abuse by law enforcement officers tasked with enforcing immigration laws is admittedly imperfect, reform, can be best accomplished through relatively minor administrative changes. Implementation of the changes proposed in the Immigration Enforcement Review Commission Act would be counterproductive to the goal of improving the current system, and should be rejected.

#### OPERATIONS OF THE BORDER PATROL

The inability of the U.S. Border Patrol to accomplish its primary mission of preventing illegal immigration into the United States stems from a combination of factors:

The level of manpower is woefully inadequate.

The equipment available to the current contingent of officers is insufficient, outdated, and much of it is unserviceable. For example, only about half of the enforcement vehicle fleet is in operating condition at any given time, and the warranty and effectiveness of almost all body armor (bullet-proof vests) issued to Border Patrol officers expired long ago.

The lack of leadership in the I&NS results in conflicting and confusing directives, making enforcement of immigration laws sporadic.

To compound the problem, the Border Patrol experiences a great deal of difficulty in recruiting and retaining qualified employees. This is due to the fact that the requirements of the job are very demanding; transfer and promotional opportunities are very limited within the Border Patrol; and the pay is extremely low in comparison with similar law enforcement jobs. Sadly, although the I&NS has the ability to partially remedy the last two problems mentioned, it has chosen not to do so.



The I&NS has resisted attempts to upgrade the journeyman Border Patrol workforce to the GS-11 level that the duties of the job justify, and has refused to pay a foreign language bonus to its employees who utilize one or more foreign languages in the performance of their official duties, even though Congress specifically envisioned Border Patrol agents when it passed the Federal Law Enforcement Pay Reform Act authorizing such payments.

Despite the recent National Performance Review report that calls for greater emphasis on merit in hiring and promotion practices, the Immigration and Naturalization Service is proposing to totally circumvent its existing Merit Promotion and Reassignment Plan by illegally offering employees positions if they agree to pay their own relocation expenses. Rather than achieving savings, this foolish suggestion would accelerate an attrition rate that is already unacceptably high, and would eventually result in the I&NS being forced to pay not only the initial relocation expenses of the illegally selected employees, but their return relocation expenses, as well as the relocation expenses of the employees who should have been initially selected based on merit.

The management of the I&NS has also wasted millions of tax dollars litigating against its employees over matters in which it has no chance of prevailing. During the past several years, over seven million dollars in interest alone has been disbursed in backpay settlements of Fair Labor Standards Act claims filed by Border Patrol employees. Rather than heeding the advice of the National Performance Review to engage in cooperative efforts with unions, the management of the I&NS continues to expend countless millions of dollars in senseless attempts to deny employees benefits and rights routinely granted by other agencies. For example, since 1987, the I&NS has refused to implement a collective bargaining agreement lawfully awarded by an interest arbitrator for Border Patrol employees. Meanwhile, the parties remain bound by the terms of a 1976 collective bargaining agreement, and employees morale and confidence in the leadership of the agency continue to decline.

Incompetent leadership at all levels continues to plague the Immigration and Naturalization Service. The mistakes and poor policy decisions of the previous administration are being perpetuated by the acting leaders, all of whom were appointed by the departing administration. The I&NS is a vessel adrift in a sea of confusion, spun by changing political winds and tossed about by the waves of public sentiment. Strong leadership is essential for the transformation of the I&NS into an efficient agency that is able to meet the challenges of today and tomorrow. While the National Border Patrol Council extends its best wishes to the incoming I&NS Commissioner, it is not overly optimistic that changes in a few top positions will cure the ills of the Immigration and Naturalization Service, as the entire bureaucracy is deeply entrenched in a culture of incompetence, the result of decades of management promotion practices that are steeped in favoritism and totally devoid of merit.

Mr. MAZZOLI. A lot of your statements really have common points. One of them is the fact that unwitnessed and unsubstantiated allegations could be brought against Customs or Immigration, and that is how I read the gentleman's bill too. Maybe there is something that I am missing.

But is that the current policy in, say, for example, Customs? Can anonymous complaints be brought against an officer for something alleged to have been done at a port of entry?

Now I shouldn't say it that way. That is inartfully phrased. Anything can be brought, but would a level of investigation be based on a totally anonymous allegation?

Ms. BILLET-ROUMELL. I do not believe so, but I would be happy to get you an answer for the record.

Mr. MAZZOLI. Mr. Bonner, are you aware of that?

Mr. BONNER. I am not aware of the exact procedures that the INS follows in investigating complaints. As I read the bill, sir, it would compel employees to report any rumor that they happened to pick up, which could bring the Government to a standstill. You would be spending all day in front of a typewriter just because you happened to overhear something in the coffee shop.

Mr. MAZZOLI. Because it does appear that there is an effort made to allow people to bring complaints anonymously and also, in effect,

by phone without having to give their name, and then also by a third party, and to give it to someone else who then carries it in. The fact that both of you mentioned that as a concern is something that also does concern me.

On page 6 of your testimony, Ms. Billet-Roumell, there are several additional concerns, and in there you also mention the question of the seriousness. I guess there are different statements in the bill about serious and unreasonable and fairly vague terminology of that sort. Is it your belief that that could cause problems as far as how these complaints would be brought and handled?

Ms. BILLET-ROUMELL. Yes. I mean our concern in the bill was, they don't specifically define the parameters of what type of complaint can be filed against an employee, so you could just have ongoing complaints coming in and being subject to long-term investigations.

Mr. MAZZOLI. Am I correct, Mr. Bonner, that the panel would be set up under the bill, the Immigration Enforcement Review Commission, would be able to make recommendations based on its investigation through its own hired or employed investigators? They could not make final disposition, but they could make recommendations?

I believe it was you or maybe your colleague on the panel who said the case could reach the point where a recommendation would be made involving, say, termination or some type of penalty, but at that point the employee would never have been represented by counsel, would never have known, to that point at least, what the nature of the grievance was and what the nature of the recommendation would be. Once that recommendation left the panel, then it would go to some agency that would then have to identify the employee and let the employee know, and probably to get counsel for the employee involved.

But is it your understanding that this could reach the point of that recommendation without the Border Patrol agent, for example, knowing of the existence of the investigation or being able to defend himself or herself?

Mr. BONNER. That is my understanding, yes.

Mr. MAZZOLI. Is that your understanding, Ms. Billet-Roumell?

Ms. BILLET-ROUMELL. Our understanding in that regard was that it could reach that point without—the employee is never guaranteed a hearing. The panels that are established under the bill, they could keep rejecting the employee's right to a hearing.

Additionally, even if ultimately they don't move forward against an employee, it is still kept as part of a record on the employee, and thereafter an employee can have a whole list of different people who may have complained about them and never had any substantiated complaints, and be tarred by this record, this permanent record on them, and never had any kinds of hearing or findings.

Mr. MAZZOLI. I noted this when I read your statement yesterday. On page 6 you talk about the early warning program. So this could remain, even an unsubstantiated allegation, maybe total rumor, maybe tattling of one employee about another employee because, as Ms. Sale said, you don't like the way that person may dress or smell or whatever, and the long and short of it, it may not be acted on, the recommendation would be put away, it doesn't amount to

a hill of beans, but that stays in that individual's file, it is not expunged, if I understand correctly.

I guess the idea is, we want to know these rogue agents, and if there is a pattern and practice, if there is a repetitiveness about their conduct, the only way you find that out is if you build up a kind of cumulative file. But the danger of building up a cumulative file, it seems to me, based on material that doesn't reach maturation, is to say that you could have a record replete with this information which could scuttle your chances for promotion and I guess for advancement and what-have-you.

Well, I thank you for that.

I am a little bit sorry that I heard what was in your testimony, Mr. Bonner. I am glad that you at least wound up on a note that you wish the new Commissioner well. I would have hoped you would have been a little more positive as you went through your statement, because I think there is really a need to look to the future.

I think it is fair to say that the Immigration Service has not been treated very well by the Attorneys General and Presidents either. So it is not exactly a decision made totally at that level what is going to be done about pay, promotion numbers, that type of thing, it is cumulative. That is why, as I mentioned to the gentleman from California this morning, the thing I am pretty proud of in our subcommittee over the years is that we have endeavored to make sure that the people on the line, in the trenches, are able to have the best opportunities, and we do that both by directing attention to the Border Patrol but also by directing attention to INS generally, making sure that, at the Justice Department level, that agency is not overlooked.

So we hope that these coordinated efforts will produce something.

The gentleman from New York is recognized.

Mr. NAPLER. Mr. Bonner, I am just reading your testimony. I am sorry I missed most of your oral testimony, but I am reading your statement, and I would like to ask you what you mean by some of this.

You say that, "The National Border Patrol Council is extremely concerned by the provision of the Immigration Enforcement Review Commission Act that would compel employees to cooperate fully with the review commission subject only to the provisions afforded by the Constitution. This provision of the proposed legislation would effectively negate employee rights granted by the Civil Service Reform Act as well as those secured through collective bargaining."

Isn't that simply, though, boilerplate language? Aren't all employees of the Federal Government in any way expected to fully cooperate with any police authority or, for that matter, with any other government authority, subject only to protective laws or constitutional protections against self-incrimination or whatever?

Mr. BONNER. No, not solely subject to constitutional provisions. That is why we do have unions to protect the employee rights, and this would ignore those.

Mr. NAPLER. What kind of thing are you concerned about, for instance? If I am a Border Patrol officer and the—whatever you call this thing—the Immigration Enforcement Review Commission is



investigating an allegation of some type of misconduct by somebody else, what kind of cooperation that would be demanded by this act would violate my rights in any way?

Mr. BONNER. Well, for one thing, employees are guaranteed the right in an administrative type investigation to representation by a union officer.

Mr. NADLER. That is an investigation where they are the target of some suspicion of misconduct.

Mr. BONNER. Anything that could result in any type of administrative action.

Mr. NADLER. Against them.

Mr. BONNER. Right.

Mr. NADLER. OK, but let's assume it is not against them.

Well, first of all, is there anything in this bill that would say that they would not be assured of union representation in any investigation where they are the possible target under this Review Commission Act that would negate that right?

Mr. BONNER. It says that they will be afforded constitutional protections, and nothing in the Constitution says that you are guaranteed the right to be represented by the union.

Mr. NADLER. No, but is there anything that would negate the right to union representation where they are the target?

Mr. BONNER. As I read it, yes, where it says "subject only to the protections of the Constitution."

Mr. NADLER. Where does it say that in the bill?

Mr. BONNER. I would have to get my copy of the bill, which is on the chair behind me, but it definitely is within the provisions of the legislation.

Mr. NADLER. Let me ask you one other question then, because we will come back to that perhaps.

Assuming that the person we are talking about who is asked to cooperate fully with the Commission is not the target of the investigation, somebody else is suspected of some misconduct. Is there any way in which the person's rights would be violated under this bill?

Mr. BONNER. Yes.

Mr. NADLER. How?

Mr. BONNER. It is a separate offense, an administrative offense, to fail to report something. If they are coming to this person who failed to report the misconduct of another officer, then this person would be guilty of an administrative violation and would be subject to disciplinary action.

Mr. NADLER. No, no, no. Wait a minute. If they failed to report something they saw, then they could—yes, it is establishing an offense of failing to report something.

Mr. BONNER. And that exists.

Mr. NADLER. OK. But my question is, assuming that they are not the target of the investigation, the target of the investigation is somebody else—now if they are suspected of disobeying a law established here of failing to report, then they are the target.

Assuming they are not the target, how—what is wrong with the requirement that they fully cooperate with the Commission? What right would be negated thereby?



Mr. BONNER. As I was trying to explain, if they want to talk to this person, obviously this person must have seen something, and if this person failed to report this earlier, that person would reasonably fear disciplinary action for that failure to report.

So this person, even though they are saying, "You are just a witness at this point," does have a reasonable fear of disciplinary action, which under title V of the U.S. Code entitles this person to union representation.

Mr. NADLER. Fine. Would this negate that right to union representation?

Mr. BONNER. As I read it, it does. Now maybe I am misinterpreting the intent, but as I read it, it would negate that.

Mr. NADLER. The sponsor is whispering into my ear, "Where are you seeing this?" He doesn't apparently think it is in the bill.

Mr. MAZZOLI. Well, while we consult with one another on that, the gentleman's time has expired.

The gentleman from California.

Mr. BECERRA. Where is it in the bill?

Mr. BONNER. I knew you were going to ask that. That is why I am still looking through it.

It is on page 7 of the bill starting with line 21 and running through 25: "Service employees shall cooperate fully with the review commission investigations subject to the protections afforded by the Constitution. Service employees shall be advised of their constitutional rights and the procedural rights afforded under this Act."

Mr. BECERRA. And where does it say that they would be denied any particular right that you have identified?

Mr. BONNER. It doesn't provide for that right, so by not providing for it, it implies to me that it is exclusive of those rights.

Mr. BECERRA. Does it eliminate it?

Mr. BONNER. Not specifically, but by not providing for it, it effectively eliminates it.

Mr. BECERRA. If it doesn't eliminate it, what makes you believe that whatever laws might be in effect are no longer applicable to any employee within the INS?

Mr. BONNER. Perhaps if the bill were modified to more accurately reflect that it would allay our concerns, but we do have serious concerns in that respect.

Mr. BECERRA. Let me move on to the question with regard to hearings. You mentioned—I believe both of you mentioned something about the concern about hearings and that subject employees of investigations would not have the right to be heard on any particular complaint.

The bill itself calls for hearings for any employee who is subject to an investigation, does it not? It does not?

Ms. BILLET-ROUMELL. My understanding of the bill is that it calls—each time when there are options for hearings, somebody on the different panel or commission—it is not a guaranteed right; let me say it like that. There have to be certain situations where they would be allowed to have it.

Mr. BECERRA. Let me stop you for a second and point you to page 9, line 17. "Both the complainant and the subject Service employee shall have the right to be represented by counsel or other rep-

representative at board hearings." Doesn't "shall" mean that it is mandatory?

Ms. BILLET-ROUMELL. My understanding of the bill, and I will go back and look at it and be happy to submit an answer for the record, is that there are specific reasons delineated in the bill where you can have a hearing, but there are situations where you would not be able to have a hearing if those different situations didn't come to pass.

I will be happy, again, though, to look back at the bill if I am incorrect about that and get back to you on that for the record. But that was my understanding of a read of the legislation.

[Additional information from Ms. Billet-Roumell follows:]

H.R. 2119, Section 6 (f)(2) (3) and (4) provide:

The panel shall conduct hearings on the complaint if—(A) the alleged abuse is of a serious nature, as defined by the regulations prescribed under authority of this Act; (B) the Panel, by majority vote, decides to hold a hearing. (3) The Panel shall issue a written finding on the complaint based on the report alone or on the report alone and on a report and hearing, if one is held . . . (4)(A) If no hearing was held, request that the Panel conduct a hearing. A hearing shall be held if one member of the Panel votes to hold a hearing.

The legislative language is clear, there is no guarantee for a hearing. If the complaint is not "serious" as defined by the regulations or if none of the Panel members find it necessary to hold a hearing—there will not be a hearing for the accused service employee. Employees have no fundamental due process rights in this legislation if they do not have a guaranteed right to a hearing.

Mr. BECERRA. And it is the case that the board has no power to institute discipline upon an officer, correct?

Ms. BILLET-ROUMELL. That was our understanding of the legislation.

Mr. BECERRA. They only can make recommendations.

Ms. BILLET-ROUMELL. Yes.

Mr. BECERRA. And under the agency's own laws and regulations, any time an officer may be subject to discipline, the officer is entitled to representation and a hearing, correct?

Ms. BILLET-ROUMELL. That is correct in the U.S. Customs Service.

Mr. BECERRA. So anything that is recommended to the agency by this board with regard to discipline of any sort would first have to go through the agency, and if the employee requested some form of hearing with representation, correct?

Ms. BILLET-ROUMELL. Yes, that is correct.

Mr. BECERRA. Thank you.

You mentioned in earlier testimony that this legislation would have a chilling effect on employees. That seems to imply to me that what you are saying is that if we have an independent oversight or watchdog agency, that agents would all of a sudden be concerned or not conduct themselves in the normal course of functions.

Ms. BILLET-ROUMELL. What our feeling on that is, not that if you have an independent review board out there, that that would chill them in and of itself. Our concern is that if you have an independent review board out there where you can have an anonymous complaint filed against you, where you are not guaranteed a hearing in every situation, where you have passengers with an understandable reason if they are being detained for drugs, where they may go ahead and file a complaint—under those situations of having

that type of board, yes, we believe that they would be chilled because, they wouldn't have the appropriate protections and that they would be so afraid of detaining someone.

Mr. BECERRA. Well, let me ask you—and my time is expiring, but let me ask this last question, if I may, Mr. Chairman.

If indeed in either of your two agencies a call came in by a caller, a woman who said, "I was raped by one of your officers while I was in your custody," and she did not give her name, what would your agency do? Would it just drop it because it was an anonymous call?

Ms. BILLET-ROUMELL. I would like to respond to that. The chairman had earlier asked us what the procedure is now for an anonymous complaint, and I don't know the answer, and I would be happy to get back to you on that.

Mr. BECERRA. I would appreciate it.

Ms. BILLET-ROUMELL. I do believe that they would do an investigation on such a serious allegation, but I will get back to you.

[The information follows:]

Complaints of such a serious nature would be turned over to the Office of Internal Affairs. That Office would turn it over to the local authorities. Currently, whether or not an anonymous complaint is investigated depends on the gravity of the complaint. The example of a rape is obviously so extreme as to warrant an investigation. However, Customs does not investigate all anonymous complaints. This practice is different from the proposal in H.R. 2119 which would require an investigation of all anonymous complaints regardless of the seriousness of the allegations and would allow findings based on anonymous complaints without a hearing.

Mr. BECERRA. How does that differ from what I am proposing in my piece of legislation?

Ms. BILLET-ROUMELL. If I could just finish one other thing—

Mr. BECERRA. Well, because I am out of time, if you could just give me a response. How does what I am calling for in this bill differ from what you just said, that the agency would thoroughly investigate?

Ms. BILLET-ROUMELL. I think ultimately, though, the person would have to come forward so that the person would have a chance, so that the employee would have a chance to be able to respond to the charges.

Mr. BECERRA. And is there anything in my legislation that says that the person would not have to come forward?

Ms. BILLET-ROUMELL. By saying that a person could file an anonymous complaint, it was our understanding that—there is not a provision in there that says that at some point in time the person will have to come forward.

Mr. BECERRA. Right, file. That is the word, "file," now. That doesn't mean proceed with a complaint. The investigator ultimately has to come up with some information to submit a report to the board, correct? And you would think that if the board is going to make some recommendation to the agency to institute action, that there would be a requirement that there be sufficient information for the agency now, which has jurisdiction over this, to take action.

Is there any reason to believe that all this could proceed without some form of solid information either in terms of witnesses or solid documented evidence?

Ms. BILLET-ROUMELL. It was our understanding because there was no clarification about the anonymous complaint. Certainly that



would allay some of our concerns if, in fact, there is a requirement in there.

If I could just add one other point, what we pointed out in our testimony—and I would invite you to read about—is the difference really between the Border Patrol and the Customs Service. Some of those allegations, obviously, such as like an allegation of a rape—the Customs Service, they only deal at the port of entry. There is no parallel role to the Border Patrol. They are being—in every step of the investigation, it is in a contained environment, and there are other personnel, including supervisory personnel, monitoring that kind of behavior, and I would just like to bring that to your attention in terms of the different roles because they really are quite different.

Mr. BECERRA. Thank you.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much.

That is an important point, the difference in the role.

But let me pursue the point brought up a moment ago. Again, this is just a bill and it is always to be perfected. That is the purpose of a hearing, to have experts come in and tell us some of the shortcomings.

But as I look at the gentleman's bill, while on page 9, starting at line 17, it does guarantee a right to have counsel at a hearing, if you go to page 8, at line 13, "The panel"—and I assume that that means the commission—"shall issue a written finding on the complaint based on the report alone or on the report and a hearing if one is held."

So you are only guaranteed counsel at a hearing, yet a report could be filed without a hearing, which suggests that you would not have to be represented, you would not have the benefit of counsel. I am not sure you would have the benefit of knowledge, quite frankly.

It could very well be that you could reach the point of a recommendation not based on a hearing, which is permitted under the bill, and the employee may never really have notice of that. So the employee could be gathering information, evidence—you know, how we talk about getting a paper trail. You could be using that opportunity to prepare your paper trail, if nothing more, getting evidence, getting depositions, getting affidavits.

So I think, again, that is what this hearing is for, for the gentleman to hear comments about his bill, its strengths and its shortcomings, and I think that what appears to be a situation, you could reach a long trail in this distant point in their investigation without having a hearing.

In fact, a recommendation could issue without a hearing, and an employee is only guaranteed counsel at a hearing.

Let me ask a question generally, Mr. Bonner, to sum this up. Do you think the current provisions in the law, the Immigration and Nationality Act, as augmented by regulations, as augmented by union agreements with the Immigration Service now, augmented by the Administrative Procedure Act, and anything else which is currently effective, coupled with the things you heard this morning, is enough to take care of the problems that we know we have, which is that we have some agents who just don't play by the book?

Mr. BONNER. I think it is. I think the system in place, with just a very few minor modifications, can be very effective in addressing the very small number of substantiated complaints that exist. And I would like to emphasize that in comparison to the number of arrests, the number of substantiated complaints is minuscule.

Mr. MAZZOLI. I think also, as Ms. Billet-Roumell pointed out, the difference between her people, hosted in lighted surroundings, inside buildings where you have a lot of observers, public settings, against the things that take place sometimes between ports of entry, where you have remoteness, darkness, anonymity, that type of thing.

This data you have of one complaint per 17,000 are pretty impressive, because that 17,000 is an arrest, a detention. It is a contact; it is a person-to-person, face-to-face situation, not just waving someone through a line. And to say that you have but one complaint derived from 17,000 arrests, to me, is evidence that we ought not to leap before we look in the sense of setting up a brandnew program if what we have with implementation with additional money and so forth can work.

I think you ought to take back to your people this panel's appreciation for what you do, and the same with Ms. Billet-Roumell's people. Take back our appreciation for the work you do under trying circumstances, and the fact that you do it to the degree that you do, with professionalism is pretty remarkable. I think it suggests that the leadership within the organizations is very solid, and we appreciate that.

My time has expired. I yield to the gentleman from New York.

Mr. NADLER. No further questions, Mr. Chairman.

Mr. MAZZOLI. The gentleman from California.

Mr. BECERRA. Just a couple more questions.

Let me go back to the issue of the hearing. I think I understand what the concern is, and perhaps it is valid.

On page 7, lines 21 through 25, we talk about providing the protections afforded by the Constitution, and it says "Service employees shall be advised of their constitutional rights and the procedural rights afforded under the Act."

I think I see your point. Because we only mention that you should be advised of those particular rights, you may think it precludes the others. So I think actually there is a point well taken there that, in use of the word "advised," it could be implied that that excludes any protections of any other particular rights under law or regulation that employees may have.

So I would be very willing to consider some changes if you have some to recommend, because as I understand it, to be advised means just that those are necessary admonitions that must be given to the employee. There is nothing that says that any other admonitions that you are entitled to as an employee—for example, you are entitled to consul or representation at any point of an investigation—is necessarily excluded. But I think that is a point well taken that the language might make it sound like you are not provided any additional rights. So I will take that into consideration. It is a point well taken.

Let me ask, Mr. Bonner, a couple of questions, because you have a lot of obvious experience on the front line and with the employees

of your colleagues that you deal with. You mentioned some of the things that could be done within the INS to try to shape it up.

With regard to the screening process, to make sure that the overwhelming majority of members of the INS who do a tremendous job—and when I have had a chance to deal with them, it is obvious that they do a tremendous job under very difficult circumstances—what can we do about the few bad apples, the rogues, within the agency that I think have caused the problem? And perhaps you don't agree that there are some bad apples, but I would say that there are a few individuals that have tarnished the reputation and perhaps caused some of that low morale within the agency.

Mr. BONNER. I would agree that there are bad apples within the agency, and I think the only way to deal with those aberrations is very harshly. You must make an example and let all of the employees know that that type of conduct is not tolerated in any fashion.

Mr. BECERRA. Would you say that the INS is right now making an example of some of these individuals?

Mr. BONNER. Of some, yes, and it is rarely publicized.

The Office of Inspector General, unfortunately, has a very covert way of doing business. They do not share information regarding the results of their investigations or any subsequent disciplinary actions with the public, and I think that is unfortunate.

If the public knew that agents had been fired—for example there was an agent fired for beating an alien who was handcuffed in the back of a patrol car. Now the alien had dragged this agent with a car. The agent was halfway in the car; he had been dragged for several hundred yards. But that still did not justify him, after that person was in custody, to play "catchup." And that employee was fired, and that was a very poignant example for the employees within the Service.

Unfortunately, the public is not aware of these things.

Mr. BECERRA. Is there enough—and I ask this of the two of you—do you believe that there is enough employee input within the management level decisionmaking process on what needs to be done to try to correct what may ill either agency? Do you think that there is enough opportunity for employees to provide the input necessary for the folks up top to know what front-line personnel need?

Mr. BONNER. Unfortunately, in the Immigration Service that is not the case.

Mr. BECERRA. What about Customs?

Ms. BILLET-ROUMELL. I think that we are working toward that and there have been vast improvements in that area and in the union's relationship with the Customs Service, and we are hoping that will continue to move in that direction.

Mr. BECERRA. I would urge both of you, especially folks within your ranks who have taken on some of these issues and are looking into them, to let us know if some of those recommendations that you have made in the past or some of the things that you think would be helpful in trying to make both agencies function much more efficiently. Ultimately, whether it is in legislation, and perhaps sometimes flawed legislation, I think a lot of us, especially the chairman, I know, is trying to make sure that the agencies are doing the type of work that make all of you look good, and unfortu-



nately, the good stories, as you have mentioned, Mr. Bonner, sometimes don't come out and what does come out are the bad stories.

So I thank you for testifying, and I thank you for pointing something out that, on second thought, may have some merit to it, and I will certainly take a look at those provisions in the law to make sure that none of the rights that I know that you fought very hard to secure are not abrogated.

Mr. BONNER. Good.

Mr. MAZZOLI. Thank you very much, and as we had on our first one, the record will be kept open in case there are additional questions or if you have any comments or if you have any material you wish to submit to augment your record, that certainly will be accepted. We thank you for your time.

Now I would like to invite our last panel: Mr. José Moreno, executive director of the Migrant and Refugee Services, of the archdiocese of El Paso; Councilman Bruce Wheeler, a member of the City Council of the City of Tucson, Arizona; Mr. Dan Stein, who is the executive director of the Federation for American Immigration Reform; and Mr. Mario Moreno, the regional counsel of the Mexican-American Legal Defense and Educational Fund.

Gentlemen, welcome. Because of the hour please summarize your statements, which of course will all fully be made a part of the record. And, as the last panel, you observed the earlier panels, so there may be some opportunity to help us by maybe deviating a little bit from your text, if that seems to be appropriate, to direct attention to some of the things that occurred earlier today.

So, having said that, Mr. José Moreno.

#### **STATEMENT OF JOSÉ G. MORENO, EXECUTIVE DIRECTOR, DIOCESAN MIGRANT AND REFUGEE SERVICES**

Mr. JOSÉ MORENO. Mr. Chairman, Mr. Becerra, first of all, I would like to thank you for giving me this opportunity to testify in regards to H.R. 2119.

Mr. Chairman, earlier you stated to one of the witnesses that you would hope that he would show more vision and more optimism, and it is exactly for that reason that I am here supporting the passage of H.R. 2119. It is a vision of working with the Border Patrol and the INS, with local communities to improve cooperation and relationships.

And it is also, I believe, that same vision that prompted Governor Richards of Texas to support this bill. In her statement—and I will make it brief—she states, "This Commission will provide community outreach in order to build stronger positive relations between the Immigration and Naturalization Service and the local community and investigate complaints of abuse in the enforcement of immigration law." She is fully supportive of this bill, as is Mr. Ronald Coleman, a colleague of yours—

Mr. MAZZOLI. I know Ronald Coleman very well.

Mr. JOSÉ MORENO [continuing]. And other organizations throughout the State of Texas, especially those chambers of commerce which represent the Hispanic community.

In El Paso, we have to deal with the reality of having the Border Patrol as an integral part of our community. We have had to live with the Border Patrol, many times in cooperation but also, unfor-

tunately, many times in conflict. The conflict comes from the lack of communication between the two communities.

A case in point. Within the last few months, El Paso has created its own accountability commission. It is a municipal committee. Countless times, we asked the Border Patrol representatives to please appoint someone to this commission. Countless times, we were rejected. They created their own advisory committee, which is neither independent nor has any authority to conduct investigations.

The city municipal committee, or accountability commission, also is limited in its powers. It has no subpoena powers of Federal agents. Therefore, we need to have a Federal review commission to investigate any alleged acts of abuse on the part of law enforcement agencies along the border.

Bowie High School is an old high school in El Paso. This high school's students brought a lawsuit against the Border Patrol for various acts of abuse. Although they were first asked to stop these acts, such as harassing students, they refused, and a lawsuit had to be filed.

I believe that a review commission, properly in place, properly working, would prevent lawsuits and in the long run save the Government money from having to defend against these types of lawsuits.

The acts of harassment that were brought to light in the Bowie High School lawsuit ranged from an officer pointing a gun at one of the coach's heads, unprovoked, to harassing students and residents of the area simply—and this is according to the court's judgment—because of their Hispanic appearance. These are the types of activities that we must stop. These are the types of activities that I believe this review commission will help prevent.

A series of articles entitled "The Wall of Silence" also deals with the problems of investigating and taking complaints on the part of the Border Patrol, the OIG, and the Customs.

In taped encounters between complainants or volunteers and members of the Border Patrol, of the INS and Customs, at least half of them indicated that the officer representing the Service was unaware of their own reporting procedures. In other instances, there was actual bullying or a disregard for the complaints that were trying to be made.

There is at least one occasion where an individual who filed a complaint was never called back.

Accountability commissions are commonplace now in larger metropolitan areas. We now have one in El Paso for the Border Patrol.

But it is not to point fingers at the Border Patrol or any other law enforcement that we developed our commission. It is not to say that the Border Patrol is not doing its job well. Quite the contrary. With one of my cousins being a Border Patrol agent in Laredo, I know that the job of being a Border Patrol agent is extremely difficult, with limited resources.

But it is in the spirit of cooperation, it is in the spirit of opening communication and allowing both the community members, the INS, and the Border Patrol that I believe that I know, through my experience, that the passage of H.R. 2119 will be a tremendous benefit not only to the community, but to the Border Patrol itself.

I would also, if there are any other questions remaining in the committee's mind, like to invite the committee to visit us in El Paso or to visit the border region and to look at the reality of our situation, which is unlike any other in any other part of this country.

I thank you for your time.

Mr. MAZZOLI. Thank you very much, Mr. Moreno.

[The prepared statement of Mr. José Moreno follows:]

PREPARED STATEMENT OF JOSÉ G. MORENO, EXECUTIVE DIRECTOR, DIOCESAN  
MIGRANT AND REFUGEE SERVICES

I thank you for this opportunity to present the views and experience of our community of El Paso, Texas regarding border law enforcement activities and the need for the creation of the Immigration Enforcement Review Commission. My statement is based on my experiences as a member of Governor Richards Advisory Committee on Immigration and Refugees, a member of El Paso's Border Patrol Accountability Commission (now renamed Human Relations Commission) and as the Executive Director of the Diocesan Migrant and Refugee Services (DMRS). As Director of DMRS, a program that receives well over 15,000 visits a year from immigrants and their family members, I witness on a daily basis the problems, the hopes, desires and even the trauma that our clients hold when trying to immigrate into our country. Many of our clients invariably have come into contact with members of the Border Patrol, and, as a matter of course, also come into contact with other officers of the Immigration and Naturalization Service (INS). I must also state that many of our clients are U.S. citizens who may wish to help family members immigrate into the U.S. I am here to state, as Governor Richards has done in a letter to numerous members of Congress, my strong support for H.R. 2119. In Governor Richards' letter she states that "this commission will provide community outreach in order to build stronger positive relations between the Immigration and Naturalization Service (INS) and the local community, and investigate complaints of abuse in the enforcement of immigration law." She further says that she is aware of the divisiveness surrounding immigration issues and the need to address these issues in a positive manner. Governor Richards believes that the creation of the Immigration Enforcement Review Commission will do just that. (Attachment 1). Representative Ronald Coleman, also a supporter of this legislation, was praised by the El Paso Times for supporting "a bill to establish a much needed independent commission. . ." (Attachment 2). In addition, the Texas Association of Mexican American Chambers of Commerce (TAMACC) passed the resolution supporting H.R. 2119. The TAMACC passed the resolution, in part, because its members believe there is a "lack of accountability by U.S. Customs and Immigration Officials." (Attachment 3). The establishment of a federal oversight commission is important to El Paso and the Border Patrol. Advisory Committees and other bodies with limited resources and investigatory powers are inadequate to address the problems confronting our country in the area of immigration law enforcement.

COMPLAINTS AND BORDER LAW ENFORCEMENT

In El Paso, Texas, it can safely be said that the Border Patrol is the single most visible agency in the region. The presence of the Border Patrol in every part of our city and the areas outside our city limits makes it almost impossible to avoid contact with its officers.

While the sight of Border Patrol vans, agents and other INS officers is common place, the relationship between the Border Patrol and the community, especially the 70% of the community which is hispanic, can be termed as uneasy.

Throughout the years, complaints against INS and Border Patrol agents have been lodged by members of the El Paso and Juarez communities. It has been my experience that few of these complaints have been resolved. A case in point, the Mexican Consulate in El Paso, which receives, and in turn reports, complaints regarding INS and Border Patrol officers finds that a majority of the alleged abuse cases it has reported are either still pending or the response from the INS was unsatisfactory. In a list of twenty-two (22) reported incidents of alleged abuse by the Border Patrol, five (5) cases are reported as having unsatisfactory responses (from the Border Patrol), two complaints were not accepted and the remaining fifteen (15) complaints are pending or have been given no response at all. This list has complaints from 1989 through February of 1993. As will be discussed later, these figures are consistent with results from a report done by the El Paso Times.



This list notwithstanding, there are individual cases of abuse which point strongly to the need for an independent review commission.

#### A DROWNING ON THE RIO GRANDE

In 1987, as a young man by the name of Armando Valenzuela tried to pull his way back to Juarez, Mexico on a make-shift raft, two Border Patrol agents pulled the rope which he was using to balance himself. These officers pulled the rope even though people had repeatedly shouted to them that the man could not swim. Armando Valenzuela fell into the river and drowned. Several years later a United States Federal District court awarded the family over two hundred thousand dollars (\$200,000) for the negligent acts of the two Border Patrol agents. Responding to a Freedom of Information Act request, the Department of Justice informed me that the two Border Patrol officers involved did not receive any disciplinary action as a result of the drowning. (Attachment 4).

#### OFF-DUTY USE OF FIREARM

During a 1990 collegiate football game, an off-duty Border Patrol agent fired his weapon at a parked truck. The use of the weapon was precipitated by a brawl with other individuals also attending the game. Convicted of two felonies for the use of his weapon, Officer Donald Toovey remained on the Border Patrol payroll for more than a year before being dismissed.

#### ON-DUTY USE OF FIREARMS

Agent Michael Elmer shot at an unarmed man in the back and killed him. After the shooting, rather than seek medical assistance for the victim, whom doctors estimate may have lived for up to thirty (30) minutes after the shooting, Elmer dragged the body behind a tree trunk. It was during the trial that officers testified that warning shots—against agency policy—takes place. Other practices, such as carrying unauthorized firearms while on duty, are also common. With the code of silence within the Border Patrol, this information may never have come to light if not for the events of June, 1992. However, with an independent oversight commission, we would not have to wait for this type of tragedy before unprofessional acts of this nature are discovered.

#### "WALL OF SILENCE"

Periodically, people will call or come into our office complaining of verbal, psychological and/or physical abuse. Many fear reprisal if they complain, others simply do not believe anything will be done. The people who allege abuse are U.S. citizens and Legal Permanent Residents. The undocumented immigrants are the least likely to complain since they fear any type of exposure will bring them more unwanted attention by INS.

In a very important series of articles, reporter Paul Salopek and the El Paso Times set out to document whether the INS, the Border Patrol and Customs ignored or assisted persons with complaints. On the whole, the articles are an indictment against the border law enforcement agencies and their procedure for taking complaints of alleged abuse.

In taped conversations of individuals trying the file complaints with the various border law enforcement agencies, Mr. Salopek found that in most cases the officers talking to the complainants showed confusion regarding their own agency's complaint procedures, indifference at the complainants' allegations, or even "outright bullying". In half of the dozen taped encounters, the officers did not follow their own complaint procedures. In at least one occasion, the individual never received a call-back after he made the complaint. Furthermore, Border Patrol agents themselves showed low moral and general dissatisfaction. One agent even stated that the Border Patrol is "just locked up back in 1924 when it was created. They haven't learned you can't be a cowboy anymore."

#### BOWIE HIGH SCHOOL

One of the highest profile cases in recent history deals with Border Patrol agents entering the campus of Bowie High School, which is located close to downtown El Paso. Aside from entering the campus without any search warrants, the Border Patrol is also accused of harassing students and residents of the Bowie High School area based on no more than the color of the person's skin.

The pattern of stops and harassment continued unabated, even after students and the principal complained (Attachment 5). Worse, the incidents of abuse include a

coach of hispanic descent having a gun pointed at his head, without any provocation, a school secretary (also an hispanic) being followed home and having her car searched, and numerous students being stopped around the campus for looking hispanic. Judge Bunton of the U.S. Federal Court of the Western District of Texas found that the Border Patrol lacked the articulable facts necessary to warrant the stops being made by agents. Currently, the Border Patrol is under injunction from making such unconstitutional stops. (Attachment 6).

#### ATTEMPTS AT COOPERATION

Since before the U.S. Commission on Civil Rights released its report in 1980, "The Tarnished Golden Door", allegations of abuse by the Border Patrol have been published. The INS has consistently made statements that the problems will be corrected. Unfortunately, not much has changed in the ensuing years.

While some reorganization has taken place, the INS has done little to implement the necessary changes. Attempts by national and local organizations, and municipalities have gone by mostly ignored by the INS. One of the most recent examples of this indifference came after the city of El Paso formed its' "Local Border Patrol Accountability Commission". The Border Patrol was asked repeatedly to assign an agent or representative to the Commission, but the Border Patrol refused. Instead, the Border Patrol formed an Advisory Committee which would look into complaints and would also seek positive statements about the agency. This public relations committee has no power to conduct it's own investigations and lacks any independence from the Border Patrol.

The City Commission also has limited power since it cannot subpoena federal agents. However, the creation of the City Commission was seen as a positive step by many members of the community, even if the Border Patrol refused to cooperate.

#### PROCEDURE STILL UNCLEAR

After years of trying to follow complaints through the process, I have come to the conclusion that the system needs to be replaced by an independent investigatory and oversight body.

I am not alone in this assessment however. Through discussions with members of the U.S. Commission on Civil Rights and through my own observations of testimony during the hearings held by the Civil Rights Commission in El Paso, Border Patrol officials themselves expressed frustration with the current system.

At the root of the dissatisfaction is the lack of timely resolution to complaint cases. Complaints will languish in the system for months, or even years. As reported by Mr. Salopek, some cases are lost, with no record of a complaint ever being found again. Of the twenty-two (22) well documented abuse complaints inquired, INS told him that no record existed for fourteen (14) of the cases. We have had the same experiences. After a while, we would simply tell individuals to file a complaint, but they expected little to result from these filings. The Office of Inspector General (OIG) lacks the necessary resources to give cases of alleged abuse the priority they deserve. While the Federal Bureau of Investigation (FBI) conducts some of the investigations, they do not make recommendations as to disciplinary actions that should be taken. According to one FBI agent in El Paso, they merely investigate and report facts.

#### RECOMMENDATION

The Federal Government should follow the trend many municipalities are taking. Independent civilian oversight commissions have been established to help law enforcement agencies cooperate better with the community. While initially seen as a threat, the various police departments which work with oversight commissions have found them to be helpful. The Police Foundation, one of the largest police organizations in the country, also believes that independent oversight bodies are positive and actually help improve relations between the police and the public. The U.S. Government should not exclude itself from this nationwide process to bring accountability to the Border Patrol.

I am continuously optimistic that positive change will come about, but I have learned that waiting for the INS to change internally to bring about the desired changes will simply be lost time. H.R. 2119 is in the best interest of the local communities and the Border Patrol. I fully support its passage and it is my hope that the members of this committee will understand its importance as well.

ATTACHMENT 1



STATE OF TEXAS  
OFFICE OF THE GOVERNOR  
AUSTIN, TEXAS 78711

August 31, 1969

ANN W. RICHARDS  
GOVERNOR

The Honorable Charles Wilson  
U.S. House of Representatives  
2256 Rayburn Building  
Washington, D.C. 20518

Dear Representative Wilson:

The Governor's Advisory Committee on Immigration and Refugee Affairs has recently informed me of several initiatives regarding immigration reform, one of which is the creation of a commission that will have oversight of the enforcement of federal immigration laws. This commission will provide community outreach in order to build stronger positive relations between the Immigration Naturalization Service (INS) and the local community, and investigate complaints or abuse in the enforcement of immigration law.

As you know, legislation to create the Immigration Enforcement Review Commission has been introduced. In proposing to locate this federal commission in El Paso, the authors of the legislation have given Texas the opportunity to be at the forefront of evolving immigration issues and the opportunity to be home to a federal commission which will have a positive impact on our state.

We are all aware of the divisiveness surrounding immigration issues. Therefore, efforts to address these issues in a positive manner are important. This legislation does that, and I support the creation of the Immigration Enforcement Review Commission.

Sincerely,

A handwritten signature in cursive script, reading "Ann W. Richards".

ANN W. RICHARDS  
Governor



## Coleman signs on to support border agencies commission

**E**l Paso Congressman Ron Coleman has thrown his support to a bill to establish a much-needed independent commission to review

civil rights complaints against the Border Patrol, Immigration and Naturalization Service and the Customs Service.

The bill, introduced by U.S. Rep. Xavier Becerra, D-Calif., would address ongoing concerns that the border agencies are less accountable than they should be when it comes to complaints of ill treatment from legal U.S. residents as well as undocumented immigrants.

In supporting House Resolution 2119, Coleman noted that it has the backing of MALDEF and the Mexican American Bar Association of El Paso and that the El Paso City Council has established a panel to take complaints.

"I think a panel can offer some constructive ideas ... and can be an asset to law enforcement, not a hindrance," Coleman said.

The bill, sent to the Judiciary Committee's Subcommittee on International Law, Immigration and Refugees, also needs the support of local governments and citizens.

### INFORMATION

For more information about House Resolution 2119, call:  
 ■ U.S. Rep. Ron Coleman's office in El Paso at 534-6200 or in Washington at (202) 225-4831.

ATTACHMENT 3

**SUPPORT OF H.R. 2119 TO REMEDY  
IMMIGRATION LAW ENFORCEMENT ABUSE**

WHEREAS, beginning with a U.S. Commission on Civil Rights report in 1980, civil and human rights organizations, including the ACLU, American Friends Service Committee and Americas Watch, have documented a pattern of widespread abuse by Border Patrol and other federal customs and immigration personnel; and

WHEREAS, customs and immigration officials have taken little or no corrective action in spite of repeated efforts over the years by civil rights groups and Congress to have them do so; and

WHEREAS, the Mexican Government has long expressed preoccupation with the treatment of Mexican business people and Mexican citizens by customs and immigration officials at ports of entry; and

WHEREAS, Mexican business personnel will have increased contact with customs and immigration officials as trade between the two countries expands; and

WHEREAS, good business relations with Mexico are important for expanding trade between our two countries; and

WHEREAS, on May 13, 1993, a group of House members led by Xavier Becerra (D-CA) introduced legislation to create a federal Immigration Enforcement Review Commission, to be headquartered in El Paso, Texas, that would independently investigate complaints against customs and immigration officials and recommend disciplinary action; and

WHEREAS, we believe lack of accountability by U.S. customs and immigration officials is a problem that requires independent review to ensure fair investigation of complaints and prompt and effective remedial measures:

NOW, THEREFORE, BE IT RESOLVED that the El Paso Hispanic Chamber of Commerce supports H.R. 2119, the "National Immigration Review Commission Act" because it attempts to increase the accountability of customs and immigration officials, and therefore is in the best interest of continuing good business relations between Mexico and the United States.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Resolutions Committee of the Texas Association of Mexican-American Chambers of Commerce for consideration by that committee for submission to the TAMACC State Convention in El Paso, Texas, on July 29-31, 1993.

## Immigration and Naturalization Service

ATTACHMENT 4

Southern Regional Office  
7701 N. Stemmons Freeway  
Dallas, Texas 75247

AUG 09 1981

SRINF 3234/1.1  
DLS-91-0057

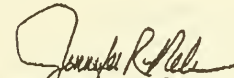
Jose G. Moreno, Executive Director  
Diocesan Migrant and Refugee Service  
1013 E. San Antonio  
El Paso, Texas 79901

Dear Mr. Moreno:

This is in response to your Freedom of Information Act (FOIA) request concerning disciplinary action taken against Border Patrol agents Ramon Vargas, Jr. and Glennis Major for their alleged involvement in the 1987 drowning death of Armando Macias.

We have been apprised by Border Patrol officials that no disciplinary action was taken against either employee.

Sincerely,



Jennifer R. Nelson  
Associate Regional Commissioner  
Office of Management



ATTACHMENT 5

## Border Patrol responds

El Paso Border Patrol Chief Dale Musagades, in answer to complaints from Bowie High Principal Paul Strekin, said last week that his agents will keep chasing undocumented immigrants across the campus.

And Musagades offered no apologies for following Strekin's secretary home and then checking her citizenship and car, or for the other incidents that Strekin cited.

It's good to see that the agency is so accommodating and responsive to the public.

Not.

ATTACHMENT 6

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

FILED

DEC 01 1992

CHARLES W. VAGNER, Clerk  
By *[Signature]* Deputy

BENJAMIN MURIELLO, ISAAC  
VILLALVA, DAVID RENTERIA,  
JUAN CARLOS JACQUEZ, HECTOR  
ORTIZ, ALBERT VASQUEZ, and  
GRACE HERNANDEZ, Individually,  
and on Behalf of All Others  
Similarly Situated,

Plaintiffs,

v.

EP-92-CA-319-B

DALE MUSEGADES, Border Patrol  
Sector Chief, THIRTEEN OR  
MORE UNKNOWN Agents of the  
El Paso Sector Border Patrol,  
All Individually and in Their  
Official Capacities, and the  
IMMIGRATION AND NATURALIZATION  
SERVICE,

Defendants.

ORDER GRANTING  
PRELIMINARY INJUNCTION AND CLASS CERTIFICATION

The Court having heard evidence and arguments of counsel in support of and in opposition to Plaintiffs' Motion for Preliminary Injunction and to Plaintiffs' Motion for Class Certification on October 23, 1992 and having filed appropriate Findings of Fact and Conclusions of Law, enters the following Orders:

IT IS ORDERED Plaintiffs' Motion for Class Certification in the above-captioned cause is GRANTED. Representatives of Plaintiff Class shall inform the Court within twenty (20) days of the filing

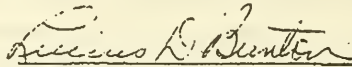
of this Order how they intent to identify and to notify the members of the Plaintiff Class for purposes of making adequate service.

IT IS FURTHER ORDERED Plaintiffs' Motion Preliminary Injunction in the above-captioned cause is GRANTED.

IT IS FINALLY ORDERED, in accordance with Rule 65(d) of the Federal Rules of Civil Procedure, the Court hereby ENJOINS the Immigration and Naturalization Service (the "INS"):

- (1) from stopping and questioning an individual as to his or her right to be or remain in the United States,
- (2) unless the Agent has a reasonable suspicion, based on specific articulable facts involving more than the mere appearance of the individual being of Hispanic descent,
- (3) that the individual is either illegally in the United States or is guilty of committing an offense against the Immigration Laws of the United States for which the INS has jurisdiction.

SIGNED this 5<sup>th</sup> day of December, 1992.

  
 HONORABLE LUCIUS D. BUNTON, III  
 SENIOR DISTRICT JUDGE



Mr. MAZZOLI. Councilman Wheeler.

**STATEMENT OF BRUCE WHEELER, COUNCIL MEMBER, CITY OF TUCSON, ARIZONA**

Mr. WHEELER. Thank you, Mr. Chairman, Mr. Becerra. I am City Council Member Bruce Wheeler, presently serving my second term on the Tucson City Council. I am part Hispanic and represent a ward which is 56 percent Hispanic. I came to live in this country when I was 18 years old.

Although Tucson is 60 miles from the border, we are in many ways a border community. About one-third of our city population is Hispanic, resulting in considerable family, economic, and cultural ties between both sides of the border. If NAFTA becomes successful in breaking down tariffs and other economic barriers, all our present associations will broaden significantly. Politically, our bonds will strengthen as well, as we enter into new labor and environmental agreements.

As Congress and the American public debate the economic benefits of NAFTA, it is important that the civil rights of citizens from both sides of the border be high lighted in order to guarantee our most basic rights at the hands of Federal police authorities. I refer specifically to the well-documented pattern of abuses at the hands of the Border Patrol against both U.S. citizens as well as undocumented persons.

This problem is magnified enormously by the fact that there exists no independent nor credible system of reporting and investigating abuses by INS officers. Victims from both sides of the border have no viable means of addressing the hundreds of reported cases of sexual assault, beatings, and even killings, nor is there recourse for investigating other violations such as illegal searches and seizures, destruction of property, and violation of due process in failing to advise persons of their legal rights.

Because these abuses adversely affect Tucsonans, the mayor and city council have unanimously passed a resolution in support of H.R. 2119, urging Congress and the President to change the way we conduct noneconomic business along and near the border.

But the negative fallout resulting from a Border Patrol out of control also will adversely affect the economic well-being for States and communities bordering Mexico.

In 1991, Mexican visitors spent \$688 million in Arizona alone, creating over 12,000 jobs and \$143 million in wages for Arizonans.

As public servants, we must give expression if Congress does not, and redress to our constituents' sense of hopelessness and especially to any violation of their civil rights.

The fact that 17 percent of undocumented border abuse victims are U.S. citizens tells us that our communities are affected. The mayor of Nogales, AZ, has complained to Congress about Border Patrol harassment of Hispanics at his places of business. Four city council members in Douglas, AZ, have voiced strong opposition to the construction of a metal wall along the border. Not only is it not conducive to our image as a free nation, but it will adversely affect business in this border town.

In February 1992, the American Friends Service Committee issued a report that said that 1,274 cases of abuse were cited at five

target areas between May 1989 and May 1991. Tucson is one of those five target areas. The others are San Diego, El Paso, the lower Rio Grande area, and south Florida. Subsequent reports show the abuses to continue.

In June 1993, Border Patrol Agent Michael Elmer was arrested and accused of shooting 24-year-old Valeo Valenzuela in the back. Although he was acquitted of criminal charges during his trial in Tucson, the mayor and city council wrote to the Justice Department asking for an investigation with regards to the civil rights violation in the death of Mr. Valenzuela.

Incidentally, Elmer, the Border Patrol agent, was also accused of drug trafficking, and, significantly, his partner the night of the shooting also reported during the trial that Elmer had threatened him if he reported the incident.

This is an example of serious problems within the organization as well.

The mayor of Tucson, writing on behalf of the city council wrote "It is the belief of this governmental body that all human life is precious and that such deaths at the hands of governmental officials should be thoroughly scrutinized."

I will not further discuss the many incidents because the committee will hear and has heard such testimony. Ample evidence of a clear pattern of abuse has been submitted by the American Friends Service Committee, Americas Watch, and the Arizona Border Rights Project, among other credible organizations.

I do not question the mission of the INS nor of its many difficulties in meeting those mission requirements. But for the Border Patrol to have any sense of credibility, it needs to get close to the community, particularly the Hispanic community. We cannot have law enforcement agencies that separate themselves from the people, nor is it in the interests of our Nation to use undocumented persons as scapegoats for our own economic difficulties resulting in anti-immigrant sentiments fueled in large part by politicians.

In Tucson, we have a police department recognized nationally for its high degree of professionalism. We have our problems, but our police department is widely respected and accepted by the community. One major reason is due to the fact that we have in place a review process that instills accountability and an independent oversight process. We have a Citizens Police Advisory Commission made up of citizens who regularly meet and discuss all sorts of police issues with the police department. We benefit from a community policing concept involving the community and working with police officers. We have police shooting review boards in which an elected official is part of a review board after every single discharge of a police officer's weapon against anyone.

These oversight functions, I believe, contribute to few charges of abuse and result in a high degree of public confidence toward our own police department.

The point I am making is crucial. A review process is critical if there is to be accountability for the actions of law enforcement agencies. They help to ensure the successful enforcement of the law while at the same time respecting the civil rights of everyone.

There is no greater ally a police agency can have than the confidence it receives from the public it serves. You cannot debate the

benefits of NAFTA and at the same time withhold public confidence in our immigration policies and its policing activities, nor must you allow skin color to be the bottom line when enforcing immigration statutes along our border.

Congress' historic dedication to our long and valiant and difficult struggle for civil rights enforcement is reflected in H.R. 2119. Please pass this bill.

Mr. Chairman, if I may, there was a comment made by the Acting Commissioner regarding Tucson, and I would like to set that part of the record straight. She said that in Tucson there was some sort of formal process of review, and I beg to differ with her; there is absolutely no formal process of review in Tucson. In fact, all the citizens organizations in Tucson involved in immigration issues complain and can document that they are consistently ignored.

Mr. MAZZOLI. Thank you very much.

[The attachment to Mr. Wheeler's prepared statement follows:]

APRIL 30, 1992

# Comment

The Arizona Daily Star

Founded 1877

Michael E. Pulitzer, Publisher

Susan J. Albright, Editorial Page Editor

EDITORIALS

## Border Patrol

### Who is policing this national police force?

The U.S. Border Patrol has extraordinary power to intrude into the lives of people who look foreign. Some of those people are American citizens. Some are illegal aliens. Some are frightened children who get swept up by a powerful agency that answers too few questions about how it uses its power.

Last week in Phoenix, representatives from public school programs that serve migrant farmworkers said Latino kids were being harassed by Border Patrol agents. Two girls were picked up at a public bus stop on their way to school. An 11-year-old was nabbed when she went to get free clothes at a church.

Advocates say the kids are being threatened and intimidated into revealing the whereabouts of undocumented family members. Sylvia Long, Migrant Program Coordinator for the Phoenix Union High School District, says the situation has led to absences and fear among Latino students.

Ed Pycatt, assistant chief of the Tucson sector of the U.S. Border Patrol, says that "in the course of business no doubt we come in contact with people who are students." But he says it's "ludicrous" to suggest his agents are targeting children.

He doesn't see anything wrong with what happened in Phoenix, but just to make "double sure," he'll forward the files to the complaint department. That means the Justice Department's Inspector General

will decide if he wants to investigate allegations of wrongdoing by the Justice Department's Border Patrol. A report — if there is one — will go back to the Border Patrol.

It's a cozy system. It doesn't begin to answer the need to police this national police force. Complaints against the Border Patrol include verbal, physical and sexual abuse, false arrests, illegal deportations and inappropriate seizure of property.

The Immigration Law Enforcement Monitoring Project of the American Friends Service Committee documented 1,274 abuses by the Border Patrol from May 1989 to May 1991. Seventeen percent were against U.S. citizens. More than a hundred were against juveniles. Jorge Hinojosa, the project's San Diego field coordinator, has heard "more than a few" stories like the ones coming out of Phoenix schools.

The immigration project wants congressional hearings in border areas. It wants members of Congress to hear what people are saying about how the Border Patrol does its job. Rep. Ed Pastor's office showed interest in the idea. So should the rest of Arizona's delegation.

The project also wants civilian oversight committees set up to create a public forum where complaints against the Border Patrol can be investigated openly. It knows what can happen if extraordinary power is not subject to extraordinary scrutiny.



# Residents leery of border police

● Four recent incidents result in the mistrust of law enforcement officials.

By RUBEN HERNANDEZ  
Citizen Staff Writer

**NOGALES** — In the past two months, three policemen and a security guard have been accused of sexual misconduct while on duty in the Nogales area.

The rash of incidents has residents on both sides of the international boundary expressing doubts about police.

"I told my husband, 'If you can't trust the police in your own community, then all is lost,'" said Estrella de la Ossa, a resident of Nogales.

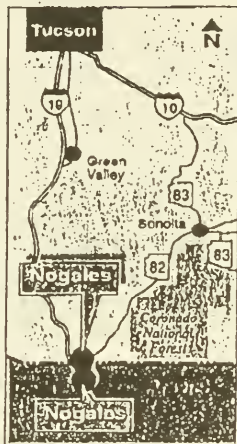
Residents here say the alleged sexual incidents involving minors have seriously shaken their faith in local police.

"It's appalling," said Tony Venditto, another resident of Nogales.

"The police and Border Patrol need to do better background checks and testing," Venditto said.

Maria Elena Bustamante, another Nogales resident, said, "We can't have trust or have confidence in the police if we have to fear them."

Border law enforcement leaders



Tucson Citizen

said the incidents have hurt the reputations of Nogales law enforcement agencies.

"Their (citizens') concerns are valid," said Santa Cruz County Sheriff Tony Estrada.

Estrada said while the majority of police are trustworthy, a few renegade officers cause problems.

He added that even the "thorough" screenings of new recruits can't guarantee bad cops won't be hired.

"It's unpredictable, but records show that only a very minute percentage of police cause trouble," he said.

Jose Luis Alday, chief of the Nogales Police Department, said he is relieved that his officers have not been involved in the recent spate of sexual allegations.

"Sure, they (citizens) can trust us," Alday said. "But it all goes back to the selection process of police."

Of the different levels of federal, county and city law enforcement agencies in the Nogales area, only the city police have an oversight panel. And that panel is staffed with police, with no civilians on it.

Border Patrol spokesman Steve McDonald said that the arrest early this month of an agent on rape charges has hurt agency morale.

"We just got over the investigation (of Agent Michael Elmer), the

# Residents leery of border police

dust was settling and our morale went up, and then comes this next mushroom cloud," McDonald said.

One of the most publicized cases involving the agency was the June 1992 fatal shooting of Dario Miranda Valenzuela, a Mexican national, by Elmer near Nogales.

Elmer was acquitted of murder last December, but has since been indicted by a federal grand jury on civil rights violations against Miranda and other Mexicans Elmer allegedly shot at.

McDonald said the timing of Agent Larry Dean Selders' arrest on the rape allegation was bad because congressional hearings on the possible creation of a civilian oversight panel for Border Patrol begin Sept. 28.

In Arizona, Sen. Dennis DeConcini, D-Ariz., and Rep. Ed Pastor, D-Ariz., are working on bills to appoint a civilian panel to look into cases of alleged abuse and to recommend disciplinary actions against Border Patrol agents.

McDonald said that only "time and our proven professionalism" will rebuild the public's trust in the Border Patrol.



Venditto



McDonald

## INCIDENTS SINCE LATE JULY

Since late July, the following incidents involving alleged rape or sexual misconduct by law officers have occurred in the Nogales area:

• Ramiro Soto, a Santa Cruz County sheriff's deputy, resigned in early August after allegations of sexual misconduct involving a minor, said Sheriff Tony Estrada.

Estrada said the deputy resigned after a complaint was filed that Soto became involved with a minor girl who was volunteering during a weekend Drug Abuse Resistance Education camp for sixth-graders. The camp was held last June in Lyle Canyon in Elgin.

Estrada said the Santa Cruz County Sheriff's Department dropped its investigation of Soto, whose age was unavailable, when the deputy resigned.

• In early August, security guard Christopher T. Tarango, 20, was arrested and charged with raping an 11-year-old girl window washer from Nogales, Son.

Tarango, who was employed by a private security firm, allegedly picked up the girl from a group of Mexican children near a large store in Nogales, Ariz.

He chased the other children away and took her behind a state Department of Economic Security building, where he raped her, police said.

The girl was taken to a local hospital for medical treatment, and doctors said the girl may need surgery.

Tarango is in the Santa Cruz County Jail, charged with sexual abuse, sexual abuse with a minor, molestation of a minor and aggravated assault, police said. His bond is \$100,000.

• On Sept. 3, U.S. Border Patrol Agent Larry Dean Selders,

31, was arrested on suspicion of raping a Mexican woman he detained while on duty in Nogales.

Selders allegedly picked up two Mexican women who had just crossed illegally. Selders drove east of the city in his Border Patrol vehicle, where he dropped off one of the women, according to police.

Selders then took the second woman to a deserted location, where he sexually assaulted her, police said.

The 22-year-old woman reported the incident to the Mexican consulate in Nogales.

Selders was released from the Santa Cruz County Jail after posting a \$5,000 bond. A preliminary hearing for Selders is scheduled for Sept. 29 in Nogales Justice Court.

Border Patrol officials said Selders is on administrative leave with pay while Nogales police conduct an investigation.

• On Sept. 8, a complaint was filed against a Nogales, Son., policeman for allegedly trying to rape a 12-year-old girl, a U.S. citizen, in Nogales, Son.

The girl's mother filed a complaint with the Nogales Transit Police against Policeman Jesus Gerardo Figueroa, 27.

According to the complaint, the policeman picked up the girl and her girlfriend in early September after offering them a ride to a local dance hall. The Mexican officer dropped off the girlfriend, then sped off with the minor to a isolated street, where he tried to rape her.

After an investigation, a judge in Nogales, Son., ruled on Sept. 11 that Figueroa was guilty of attempted rape. Figueroa will probably serve some time in prison for the attack, said Alfonso Novoa Novoa, Transit Police chief in Nogales, Son.

# Mexican abuses of human rights cloud trade pact

By Tim Padgett  
© 1992 Newsweek

**TIJUANA, Mexico** — Nobody denies that Mario Amado was drunk and disorderly. And like many other American tourists in Tijuana before him, he got locked up for it. In jail, something went terribly wrong.

Within hours the 29-year-old fence installer was dead — slumped on the floor with his sweater knotted around his neck and tied to the bars of his cell. Suicide, said police.

But the bars from which he supposedly banged himself last June are only 3 feet off the floor.

His family and U.S. authorities asked Mexican officials to investigate, and this month a Los Angeles County coroner reported that before Amado died he was massively beaten, and that a wall on his neck was caused by a thin cord, not a sweater.

His brother demands that Tijuana officials jail the arresting officers. "If Mexico doesn't clean up its act,"

Joe Amado says, "You will have more dead Americans."

Human-rights activists have long rallied at the Mexican government to clamp down on the country's brutal cops and crooked judges. They have logged thousands of cases in which Mexican police allegedly plucked innocent citizens off the street and tortured false confessions out of them.

But in spite of repeated government pledges, Mexicans — and sometimes Americans — keep right on suffering. In the last five months, three U.S. citizens have died either in, or just after being released from, Mexican jails.

But now the victims' families and those campaigning for reform have a new mechanism for seeking redress — the proposed North American Free Trade Agreement, which could greatly increase U.S. travel to Mexico.

"I support free trade and a closer

Tuesday, November 17, 1992

The Arizona Daily Star

## Mexico

relationship with Mexico," says the Amados' congressman, Rep. Howard Berman. "But it only works if there is commitment to shared values of due process under law."

In its present form, the pact says nothing explicit about human-rights abuses, and it may even have created pressure to keep quiet about them.

That's the accusation leveled by the parents of Jennifer Whitt, a 24-year-old Texas student who was arrested in Reynosa, Mexico, last year on charges that she had bought more than the legal limit of Valium — even though she had a Mexican doctor's prescription for the medicine as treatment for her buritis.

She spent almost 10 months in jail without charge, while her parents paid \$30,000 in "legal fees" to get her bailed out. She died of a bronchial attack on Sept. 29, the night she was released. Days before Whitt was released from prison, a new judge assented to the case ruled that she had broken no law.

W.J. Whitt, her father, says that the Bush administration and Democratic Sen. Lloyd Bentsen of Texas shied away from intervening out of concern for maintaining good U.S.-Mexico relations. (Bentsen aides say they did all they could.)

Relatives of another American "suicide" victim, Peace Corps employee William Yost, claim that a Peace Corps official told them that government officials were under orders not to create controversies in Mexico while the trade agreement was being negotiated.

Yost supposedly shot himself in the mouth last August — while in jail on suspicion of smuggling illegal immigrants across Mexico.

Congress may well air such horror stories when it begins debating the treaty early next year. There is no shortage of witnesses.

"I saw them treat Mexicans like dogs, and they treated me the same," says Rudy Lee Rogers, 34, a Florida welder who spent 15 months in a Mexico city jail on drug charges.

He says federal police tortured him for 12 days to make him sign a confession. They beat him in the

chest and testicles, shocked him in the abdomen and used the *tehuacanazo* — blasts of chili powder and molten water up the nose, he says.

According to Amnesty International, another technique is to put a suspect's head inside a plastic bag filled with ammonia fumes. Amnesty International's latest report on Mexico is titled "Torture With Impunity."

Mexican officials will be ready if such charges become an issue. President Carlos Salinas de Gortari has pushed broad judicial reforms; a few cops have been charged, and new rules make the police subordinate to prosecutors.

The Mexican Congress last year enacted tougher punishments for torture. (And U.S. cops themselves have been publicly accused of torturing Mexican immigrants.) But laws alone can't change the system.

Critics of Mexico's human-rights record say they hope Bill Clinton as president will insist on tougher enforcement as a price for approving the trade agreement.

Otherwise, they say, open borders with Mexico will only increase the number of Americans at risk.

Mr. Stein.

**STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR,  
FEDERATION FOR AMERICAN IMMIGRATION REFORM**

Mr. STEIN. Thank you, Mr. Chairman, Mr. Becerra.

My name is Dan Stein, and I am the executive director of FAIR, the Federation for American Immigration Reform. FAIR is a national citizens group working to try to end illegal immigration and set legal immigration levels actually considerably less than they are right now. We are testifying today in opposition to H.R. 2119.

I would like to first clarify a comment made by the Acting Commissioner on the question of Armed Forces along the border. She intimated that the doctrine of posse comitatus has a constitutional basis. We don't believe that is correct.

Our understanding is that posse comitatus is a statutory bar which may have firm grounding in prudential policy reasons but that so long as the military is subservient to civil authority there is no basis for prohibiting military personnel to enforce civilian law.

The specific objections that we have—clearly, no one would want to condone violence along the border or any abuse along the border, and FAIR quite naturally supports full and complete, rigorous investigation of allegations of abuse by any agent of the U.S. Government.

The specific proposal, however, in H.R. 2119 seems to us to be an inordinate, inappropriate, and unmanageable intrusion into the affairs of an independent functioning agency of the Government. It appears to be a permanent empanelment of a de facto grand jury which must investigate any and all allegations of misconduct which are brought to its attention, and the low standard or threshold for requiring the commission to engage in the investigation seems to be an unduly burdensome and bureaucratic way of handling complaints from the public.

There appears to be no standard or definition of the minimal amount of information required to be furnished to form an adequate prima facie complaint to justify a further demand on taxpayer resources.

A consultation commission or an advisory commission made up primarily of citizens living in the area, U.S. citizens, is certainly a concept to be encouraged, and community outreach of all kinds is important in enabling any agency like the Border Patrol to function effectively. But the commission proposed here does not appear to us to be an agency which is going to shore up relations with the Border Patrol or between the Border Patrol and the community. It, in all likelihood, would wind up in time alienating some members of the Service personnel, given its ability to conduct seemingly unregulated investigations.

We have some other points which I have laid out in my testimony which I needn't go into here because they are all pretty much of a technical nature.

We are concerned about the confidentiality provisions which would prohibit the use of any of the information gathered in the course of the investigation from being used in subsequent immigration prosecutions or deportation proceedings.



Previous experience with the SAW and other amnesty-related confidentiality provisions has led us to believe that those kinds of provisions can inhibit related investigative functions by other Federal agencies, and it isn't exactly clear why it is put in here in this place. In particular, we are concerned it sends the wrong signals and degrades the significance of violations of immigration law in the eyes of people who could come across illegally.

More importantly, we think the biggest problem for the Border Patrol, Mr. Chairman, is the lack of professional goals and career objectives which many other agencies' enforcement officers are given in the course of their own career opportunities.

Each day, an office officer is expected to risk his or her life in remote canyons and valleys without any sense of having accomplished a purposeful mission. Most aliens are taken right back to the border, dropped into the hands of the Mexican Government, which releases them to come across a few moments later, and there is a strong sense of futility contributing to low morale, that the Border Patrol mission, so far as it relates to immigration, is often futile and an exercise in gamesmanship.

Anyone who has spent any length of time walking around in the canyons near San Ysidro or in the area outside of El Paso knows that we have an untenable situation on the border, and so we have included and would again refer you to our report from 1989, "Ten Steps to Securing America's Borders," for what we think would be the appropriate level of resources and legal changes to make sure that the Border Patrol can effectively stop most illegal immigration.

In addition, the strong backup of employer sanctions with an adequate investigative team, a tamperproof, counterfeit-resistant employment verification document with a birth/death registry, automated verification system—these are key, and all the evidence also suggests from when GAO studied this issue that the fastest way to eliminate discrimination or confusion about a person's legal status in some areas right along the border is to have good, effective forms of U.S. citizenship identification.

We also have recommendations on Mexico. Mexico has taken the position that it cannot prevent or hinder the deliberate, illegal crossing of its own nationals from inside Mexican borders. While we think that is, to some extent, a legitimate position, we think the Government there has taken it too far. They needn't stand by idly while young men gather around in selected staging areas to mass to enter the United States illegally each night.

Sharing a border, as we do, with Mexico, means it is important for our two friendly nations to maintain a border based on mutual trust and respect, and this trust and respect cannot continue indefinitely if one side of the border fails to respect the sovereignty of the other. Mexico can cooperate with the United States in ensuring that both Mexican and American nationals work with us to ensure that they cross only at lawful ports of entry.

In particular, Mexico could enforce antiloitering laws where individuals appear to be hanging around waiting to throw rocks or climb fences or charge in or to dash through the canyons at night.

The Mexican border police do not have to allow people to congregate near the ports of entry to dash through the traffic in order to enter by what are called bonzai runs.

Like the United States, the Mexican Government has broad latitude in enforcing broader laws within several miles of its border, certainly within 500 feet, and where large-scale professional smuggling is a routine activity, the Mexican Government can do much more. Comity among friendly nations demands nothing less.

We also recommend that we enter into negotiations with Mexico to agree to allow interior repatriation. Flying Mexican nationals back to Mexico City and turning them over to Mexican officials there would add dramatically to the cost of the trip and increase deterrence considerably, and there are plenty of precedents for it.

Overall, we think the Border Patrol does a remarkable job. The number of people they come in contact with and the Customs Service on an annual basis dwarfs by any imaginable comparison any other Federal or State law enforcement agency.

We do not think there is an established pattern of abuse. There are a handful of incidents which are tragic and unfortunate, but they do not require or suggest that we need the kind of commission that is contemplated in this bill.

The President has said he is committed to giving the Border Patrol the resources that it needs. We hope he is serious about it, because we think the general public has lost confidence in the Nation's and the Border Patrol's and the INS's ability to regulate the Nation's borders.

Given the trends in public opinion, we think it is critical that all aspects of the Border Patrol be upgraded, including its capacity to carry out its mission. That, in turn, will lead to increased professionalization, greater career tracking, lower turnover rates, and better recruitment capacity which, in turn, will be reflected in lower incidences of the kind that have been reported.

So, with that, I would be happy to answer any questions you might have.

Mr. MAZZOLI. Thank you very much, Mr. Stein.

[The prepared statement of Mr. Stein follows:]

#### PREPARED STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. Chairman and members of the committee, thank you very much for the opportunity to appear on behalf of the pro-limits Federation for American Immigration Reform (FAIR). My name is Dan Stein, and I am the executive director of FAIR. FAIR is a national non-profit, public interest organization working to educate the public about the problems associated with large-scale and unregulated immigration, to end illegal immigration and to dramatically reduce immigration levels from current levels.

Thank you for the opportunity to comment of H.R. 2119, the Immigration Enforcement Review Commission Act.

#### SUMMARY OF THE BILL

In Section 2, this bill creates the Immigration Enforcement Review Commission (hereinafter referred to as "review commission"). Section 3 stipulates the duties of the review commission: it makes non-binding recommendations to the services on the disposition of complaints it has investigated. The review commission can also make apparently wide-ranging policy recommendations about any and all functions pertaining to border enforcement or serve operations.

Section 4 lays out the duties and qualifications of commission members. The bill stipulates that there will be seven commissioners paid at Executive Level V—\$108,200 per year each, plus many investigators, community outreach directors, and led by three regional offices anchored by a headquarters office. Funding is taken out of the general appropriation to the Office of the Inspector General, Department of Justice. Section 4 also stipulates that board members may not have served with any other relevant services for a period of five years before their appointment, or have served in any law enforcement agency "within the period beginning one year before appointment."

Section 5 stipulates that investigations personnel shall investigate "all complaints brought to their review commission's attention." It also stipulates the development of an elaborate community outreach capability and authorizes the review commission to formally promulgate rules and regulations (although conformance with the Administrative Procedure Act is not expressly stipulated).

Section 6 stipulates that complaint forms must be made available, and that complaint forms "shall be written in languages reflecting the languages of the immigrant population." This section also lays out in a very general way how complaints must be received by the review commission, including by facsimile and a twenty-four-hour toll-free hotline. An elaborate public outreach campaign is proposed. This bill also stipulates that service employees must report any use of force by another service employee which they witness, and which they believe is "unreasonable in light of the facts and circumstances" within twenty-four hours to the review commission. The commission shall have broad subpoena power and other investigative tools to conduct a thorough investigation. Complaints may or may not be subject to formal hearing. A report shall be issued and furnished to the service and the relevant service employee subject to the complaint. Both the complainant and the service employee, when subpoenaed to these wide-ranging hearings, may be represented by counsel and enjoy much of the procedural process enjoyed in criminal-trial type proceeding. The burden of proof on the commission to make a finding of a violation is lighter than that associated with a criminal conviction; "preponderance of the evidence" rather than "beyond a reasonable doubt." The board can make recommendations to the INS, Border Patrol and Customs Service on disciplinary action. These recommendations are not binding; however, the services are obligated to provide an explanation for the public if disciplinary action is declined. Section 7 prohibits retaliation against any individual who files information that forms the basis of a complaint.

Section 8 limits the use of testimony gathered in the course of any complaint, investigation or hearing for enforcement of U.S. immigration laws.

#### FAIR OPPOSES H.R. 2119

Mr. Chairman, while we appreciate the apparent spirit and intent of the bill, we must oppose this proposal on the following grounds:

1. The bill appears in its entirety to be an inordinate, inappropriate and unmanageable intrusion into the independent functions of a government agency. The establishment of a permanent de facto grand jury to investigate "all" allegations of misconduct appears to be an unduly and burdensome and bureaucratic way to handle "complaints" from the public about service personnel. There appears to be no standard or definition of the minimum amount of information required to be furnished to form an adequate complaint to justify demands on taxpayer resources.

2. The bill requires that service personnel make subjective secondary judgments about the reasonableness of the use of force on his own motion. While there are certainly cases where it is obvious that an individual colleague has made a mistake, it is inappropriate to require that the report be made outside the management chain of command to a wholly independent and outside agency. The Department of Justice already has the investigative tools and apparatus to investigate claims of the application of unreasonable force.

3. There is no provision in this bill to protect service personnel from retaliatory complaints filed by the public solely for purposes of harassment, or for retaliatory complaints filed solely for harassment by the illegal crossers.

4. Because of the possibility that an employee would be subject to malicious or frivolous complaints, and because the commission is statutorily required to investigate all complaints without exception, we are concerned that there is no provision for government-funded legal counsel in the early stages of the investigation for accused service personnel.

5. The bar on commission participation by former law enforcement personnel seems to us overbroad, and suggestive of an invidious bias. There is no basis for this ban. The distrust appears to be based on the perception that former law en-



forcement personnel cannot be objective. The bill proposes a staff of investigators be employed and yet it effectively excludes many persons who might have essential experience as effective investigators. We have trouble understanding where the investigators would get the experience necessary to conduct this level of investigation, or collect the forensic evidence required.

6. The section on limitation on the use of testimony for the enforcement of the Immigration and Nationality Act sends the wrong signal and degrades the significance of violations of the immigration laws. Information gathered in the course of the investigation could form an essential basis of an independent prosecution for alien smuggling. Previous experience with confidentiality guarantees (in the SAW amnesty, for example) has demonstrated amply that there can be a gross interference in normal investigative operations by subjecting this kind of information to a confidentiality provision. This section appears likely to result in the development of an elaborate procedure requiring the government to show an independent basis for information obtained in the course of a normal investigation or deportation. It will make immigration laws, already difficult to enforce, harder still.

#### BROADER CONSIDERATIONS

The true cause of the problems at the border is the tremendous and growing volume of illegal border crossing activity—tolerated or even encouraged by the government of Mexico.

The ultimate answer is to reduce the volume of illegal traffic through true and meaningful border enforcement. This can only be accomplished by providing more resources for the Border Patrol, better training for Border Patrol officers (and all the INS), a more professional career path for the Border Patrol and a sense of meaningful operational mission, with the collateral objectives of improving retention rates.

#### PROBLEMS WITH THE MISSION

One of the biggest problems of being a Border Patrol officer is the absence of any professional satisfaction. Each day, the young officer is expected to risk his or her life in remote canyons and valleys without any true sense of having accomplished a purposeful mission. As aliens are apprehended illegally, they are immediately taken back to the port of entry, turned over to the Mexican government which releases them to come back across the border a few minutes later. "This rapid revolving door" that we have created along much of the southern border is an exercise in futility. This is quickly apparent to officers who must drive their vehicles along heavily fenced borders while being pummelled by rocks and subjected to verbal abuse and taunts. Anyone who has spent any length of time walking in and around the border region of San Ysidro or El Paso knows that an untenable situation has been allowed to develop. The situation has been many years in the making. It will not be resolved overnight. But, it can be solved and we propose that it be solved soon—but it will not be solved by this bill.

#### PRELIMINARY SUGGESTIONS

No amount of Border Patrol resources on the line will stop illegal immigration unless there is an effective backup. The strong enforcement of employer sanctions through an adequate investigative team, the use of an effective tamper-resistant, counterfeit-resistant employment identification card, backed up by an essential birth/death registry and an automated verification system are key. Also required: improved and expanded detention facilities that would detain virtually every alien who enters the United States illegally; commensurate increase in detention and deportation officers and immigration judges is also required.

#### WHAT CAN MEXICO DO?

The Mexican government has (until very recently) taken the position that it cannot prevent or hinder the deliberate illegal crossing of its own nations inside Mexican borders. While this is, to some extent, a legitimate position, it does not mean the Mexican government has to remain idly by while young Mexicans gather around selected staging areas for mass illegal entry to the United States. Sharing a boarder as we do with Mexico means that it is important for the two friendly nations to maintain a border based on mutual trust and respect. This trust and respect cannot continue indefinitely where one side of the border fails to respect the sovereignty of the other. Mexico can cooperate with the U.S. in ensuring that both Mexican and American nationals cross the border only at lawful ports of entry. In particular,



Mexico could enforce anti-loitering laws where individuals appear to be hanging around simply waiting to dash through the canyons at dusk. Similarly, Mexican border police do not have to allow people to congregate near the port of entry to dash through traffic in order to cause *bonsai* runs. Like the United States, the Mexican government has broad latitude in enforcing border laws within several miles of their border, and certainly within five-hundred feet. Where large-scale, professional smuggling is a routine activity, the Mexican government can do much more; the comity among friendly nations demands nothing less.

#### INTERIOR REPATRIATION

One of the gestures the Mexican government can do is allow the United States to fly Mexican nationals back to Mexico City where they will be turned over to Mexican authorities. Rather than simply return Mexicans by bus to the border, it is time for the United States to negotiate with Mexico the authority to return Mexicans to Mexico City by plane. Only in this way can the additional costs of the trip add to the deterrence of the process.

#### THE BORDER AND THE USE OF REASONABLE FORCE

The Border Patrol and the Customs Service are agencies that interact with hundreds of millions of people each year. Given the volume of people they associate with, it is surprising that there are not more problems. As I mentioned before, anyone who has walked in the lonely canyons near sunset knows that the Border Patrol officer's job is often an isolated and dangerous one. Lacking utterly the support personnel to feel confident of a secure position, Border Patrol Agents must often run into large groups of individuals entering illegally and seek to detain them. There are going to be times—hopefully rarely—when officers must use reasonable and necessary force. What constitutes reasonable force, depends on the circumstances. While the use of non-lethal force may be necessary or justified to subdue a resisting offender, lethal force, particularly the use of firearms, is never justified when no life is in danger. While the rule has always been that Border Patrol officers may use their firearms only in self-defense, defense of a fellow officer, or a defense of an innocent third party, it is highly unlikely that private that private individuals appointed for political reasons in the political branches of government will be a better position to assess the adherence to these rules than individuals within the Department of Justice or a duly commissioned jury of twelve persons.

#### ARRESTING AND DETAINING PEOPLE

The Border Patrol arrests or detains over a million people a year. This is an enormous number of people. The business of arresting people, depriving them of their freedom, is a necessary adjunct to the enforcement of our immigration laws. Regrettably, this can sometimes turn unpredictably violent. Few people relish the prospect of being deprived of their freedom, even for a few hours. Occasionally, individuals turn violent at the time of surrender or even afterwards while in detention. Again, there may be times where physical restraint is imperative to protect the lives and safety of custodial officers and others. Here, again, officers exercising restraint are obliged under strict rule of professional conduct, to do it effectively and efficiently to minimize risks to themselves, their fellow officers, other detainees and the general public.

From time to time, individuals presenting themselves to ports of entry refuse to cooperate in the general inspection process. Sometimes these refusals to cooperate arise from schemes to evade inspection or true identification by borders officers, or to sneak contraband across the border. Occasionally, an individual who has the right to be in this country will seek to prove a point by showing defiance at a port of entry. Since the law requires that the burden of proving eligibility to enter the United States rests with the individual applying for entry, officials at the border would be compelled to retain an uncooperative individual until their inspection can be completed. In this situation, because of resistance or lack of cooperation, some form of restraint and response is necessary. We have seen these kinds of "demonstration tactics" used from time to time to make political points about U.S. immigration law. Given the complexities of border management, it is difficult to understand how a detached and remote set of commissioners, required to investigate virtually every compliant filed by a claimant no matter how groundless, can second-guess the judgments of well-trained internal auditing professionals in the Office of Inspector General.

As I mentioned above, much of our borders, both Mexican and Canadian, are located in remote, isolated and desolate regions. Border Patrol agents who are after

all the officers most commonly associated with allegations of abuse of authority must work in these isolated areas. Often they work alone. They are far from support and need back-up. In these regions, the environment is populated by thugs and bandits who prey on helpless individuals who cross illegally. We've all heard the tragic stories of non-citizen border crossers being robbed, raped, maimed and even murdered by these border thugs. Border Patrol agents, too, have been shot, knifed, pelted by rocks as large as a man's head. Many agents have been killed, wounded or disabled by various weapons in the line of duty. These daily hazards, coupled with the apparent designed futility of the overall mission, can create a sense of frustration and exasperation which could ultimately lead to violent incidents. Beyond the steps mentioned to upgrade pay and training, and professionalizing the mission, high-visibility prosecutions are a satisfactory deterrent to unlawful actions by service personnel.

Regardless of how effective the Border Patrol or the Custom Service are, and regardless of how well we regulate the border, there will be incidents which arise that call for an appropriate investigation. The premises of H.R. 2119 are that the inter-governmental investigatory capacity, and the normal remedies for civil rights investigation and prosecution, are inadequate to ensure that justice is done. This set of assertions is made based on several high profile prosecutions that resulted in acquittal. It is also rests on a series of uncorroborated newspaper accounts, compiled mostly by the American Friends Service Committee, that suggest that not every complaint is pursued vigorously. While we are concerned about finding ways to minimize gratuitous violence, and civil rights abuse along the border, we are not convinced that H.R. 2119 in an appropriate way to deal with the problem. We believe that steps which would enhance professional training of border officers, an upgrade that would reduce officer turnover, would advance the cause of service professionalism to a much greater degree.

#### THE ROLE OF THE AMERICAN FRIENDS SERVICE COMMITTEE

Parts of the border are often lawless and lonely. An immediate priority of this nation must be to decrease lawlessness, promote stability and attract investment to the border region. But, eliminating or inhibiting the Border Patrol or eliminating the border itself will not bring this about, and is not in our nation's interest.

A major activist in the whole area of border enforcement has been the American Friends Service Committee is an agency which grew out of the Quakers' social concerns. After Congress passed the employer sanctions portion of the Immigration Reform and Control Act of 1986, the American Friends Service Committee sought to invalidate that provision by filing a class action law suit in federal district court. The Friends took a position that employer sanctions violated their core religious principles which, they allege, prohibit them from requiring any form of identification in order to offer employment. That suit was ultimately dismissed.

More recently, the Friends have been working on the question of the ethics of modern borders. The attached article entitled "Borders and Quaker Values: Reflections of an AFCS Working Group," published by the American Friends Service Committee, 1501 Cherry Street, Philadelphia, Pennsylvania, 19151, is reflective of the political philosophy which undergirds much of their discussion. The following is a quote from this article: "The actual functioning of borders often violates the Quaker sense of the right sharing of world resources. Although Friends may not always be in agreement on the policy implications of this value, they agree that the existence of vast disparities between nations and people—enormous accumulation of personal wealth while others lack basic necessities—is dehumanizing, first for the poor but ultimately for all. To the extent that borders reinforce these disparities they are a challenge to Quaker values. . . . [s]ome Friends conclude that borders as such are inimical to Quaker values and urge that they be abolished or become completely open: from this perspective, individuals should be free to move to pursue their own fulfillment, unconstrained by limitations imposed by states. That position would seem to be consonant with a vision of a common humanity advanced by some Friends."

This is a wonderful utopian sentiment, and it is clear from the attached material, that the AFSC, and Quakers generally, are grappling with different moral and ethical questions surrounding the maintenance of national boundaries. While this is a proper and appropriate function for an organization such as theirs, this perspective is important to note because it is likely to bias or skew the treatment of material received by AFSC investigators (and their affinity-group associates) in analyzing incidents of border abuse. More importantly, we are concerned that some activists are using a relative handful of unfortunate and tragic incidents in order to challenge the organic mission of the Border Patrol itself. The cause of vindicating human

rights should be premised on the desire to rectify past wrongs. But these episodes should not be used cynically as fodder for a broader political agenda to try to seek the ultimate abolition of the Border Patrol itself. It is difficult to view H.R. 2119, with its broad and unmanaged intrusions in the daily operations of the Border Patrol, INS and Customs Service without considering the possibility that the legislation is designed to achieve objectives that the overall majority of the American people ultimately would not support. We urge the defeat of this legislation.

Thank you for the opportunity to appear before this subcommittee. I would be happy to answer any questions that you may have.



*The Society of Friends, or Quakers, have long been active in movements for social work, prison reform, education, and international relief. Recently, the American Friends Service Committee (AFSC), an agency which grew out of Quaker social concerns, filed suit (AFSC v. Thornburgh) in an attempt to invalidate the employer sanctions portion of the Immigration Reform and Control Act of 1986 (IRCA). AFSC has also created a working group that drafted this statement on national borders. With AFSC's permission we reprint the report, which they remind us is not an official publication of the AFSC. Copies of the booklet are for sale at the Immigration Policy Issues Working Group, American Friends Service Committee, 1501 Cherry St., Philadelphia, PA, 19151. We follow this report with commentaries on it by Kenneth Boulding and Gerda Bikales.*

## BORDERS AND QUAKER VALUES: REFLECTIONS OF AN AFSC WORKING GROUP

### BORDERS, BOUNDARIES AND HUMAN BEINGS

As we considered questions of borders, we were confronted by two realities: the deep-seated tendency of human communities to affirm their own identity by establishing boundaries between themselves and others and the fact that such boundaries may be arbitrary and in their implementation often do harm to human beings and communities.

Existing national borders are in fact only one such kind of boundary and are the product of a long historical process. For millennia small human groups migrated over vast territories. Even after the concept of a place of permanent residence arose following the emergence of agriculture, movements of people continued. The rise of European city states, the emergence of the nation-state, and the post-colonial emergence of new nations in the middle of our own century all indicate that national borders themselves are not timeless features of the human condition but are a historical phenomenon. Indeed, this process is still taking place today, as the AFSC has witnessed in Mali, where historically migratory peoples have been adopting a settled agricultural way of life. Moreover, national borders, in general, are culturally relative: aboriginal and native people understand land and property in their own ways which differ from those of Western nation-states.

Existing national borders have often been established by war, conquest, and violence; relatively few follow geographical features and they often conflict with other kinds of boundaries arising from culture, ethnicity, language, history, and family bonds. In addition, other kinds of relationships established by voluntary community, such as participation in the

worldwide scientific community or membership in the Society of Friends also establish important kinds of boundaries. While national borders are the primary concern of this document, we remain mindful of these other kinds of boundaries.

Borders, like all human institutions, should be seen as instrumental, that is, they are meant to serve human beings. Rather than being sacralized through the nation-state, they should be assessed by how well they serve human needs, both of those living within them, and of those outside.

Problems arise not from borders themselves but from the use made of them and the implementation of border policies. Borders tend to manifest and perhaps intensify what is already present in society and in relations between nations. In a heavily militarized world, and in societies built on age-old oppressions and the domination of women by men, it is not surprising that borders are operated in ways that replicate militarism, sexism, and domination. Some border officials, for example, who are themselves relatively powerless, nevertheless feel free to abuse those even less powerful.

Issues of borders arise not only where two nation-states meet but within existing nation-states as well. This is especially the case where native peoples are struggling for recognition of their own sovereignty and rights vis-a-vis national governments. Other such examples are those of national or linguistic groups (Azerbaijanis in the USSR, French-speaking Canadians). Conflicts may also arise along state or provincial lines within nation-states.

Although border issues generally concern people, often those fleeing war or disaster, it should be kept

in mind that it is not only people that cross borders. Goods flow across borders and patterns of international trade are established. Money flows toward countries (investment) and away from them (capital flight). Indeed, the flow of international finance is beyond any existing mechanisms of regulation. Likewise, ideas cross borders despite the efforts of authoritarian governments. Drugs flow to where consumer demand is, but the effects overflow into the culture of supplying nations. A foreign military presence within the borders of a country, even when there by prior agreement, can diminish the sovereignty of the host country (e.g. US bases in the Philippines).

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*"...it is not only people that cross borders. Goods flow across borders and patterns of international trade are established."*

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Ultimately, however, it is the impact of borders on human beings that we must keep in the forefront. In recent years we have seen large numbers of people fleeing war, political and religious persecution, or economic conditions that made it impossible for them to have a decent life.

It is symptomatic that the Universal Declaration of Human Rights declares that all people have the right to leave a country and to seek asylum in other countries--but it does not assign a duty to particular states to receive people. In pursuing their rights, some groups of people have been made stateless, even for decades. Others are striving for recognition of their sovereignty. It is these people--Central Americans, Haitians, Indochinese, Palestinians, Afghanis, Soviet Jews, native peoples in the Americas, to name a few--that we have in mind as we offer these reflections.

#### POSITIVE FEATURES OF BORDERS

In their operation, borders have both positive and negative consequences. Indeed, the two are often interconnected and seem to be opposite sides of the same coin. For example, within the European Economic Community national borders no longer impede individual Europeans from migrating to other countries within the region. Yet non-Europeans remain excluded: a new border, just as firm, encircles Europe.

The following are some primarily positive aspects of national borders.

- \* Identity and self-determination

Within borders people are better able to establish their own forms of social organization, maintain their unique identities and culture, and pursue their own path to development.

- \* Protection from harmful forces

Borders provide an opportunity for peoples to protect themselves, e.g. from drugs, agricultural diseases or pests, disruptive alien cultural influences.

- \* Stability and peace

Mutually recognized borders are an essential ingredient in peaceful relations among neighbors. The establishment of national borders in Europe marked the end of warfare between feudal lords. Many nations that once fought over borders no longer do so. Governments that respect each others' borders and authority can negotiate over issues in dispute.

- \* Rational and ecologically sound administration

Administration requires manageable units--it is impossible to manage the whole world. More specifically, a national authority enables peoples to protect their resources and use them to meet their own needs.

Seen this way, borders are congruous with a number of values prized by Friends. One of these is that of variety within a common humanity. Borders enhance that variety by enabling people to conserve and develop those features that make them different. By analogy with natural evolution, it seems important to respect, retain, and enhance that variety. Within this implicit evolutionary strategy--that is, for its own survival--the human race must maintain a variety of ways of living, thinking, feeling, and speaking.

The stabilizing and peace-enhancing qualities of borders relate to the Quaker peace testimony. Friends understand peace as more than mere non-warfare between human beings. Peace entails a sense of stewardship and indeed a kinship with other creatures and the earth itself.

## NEGATIVE FEATURES OF BORDERS

As noted, most negative features of borders are the converse of the values embodied in them. The following is a short catalog of some of these.

- \* **Impediment to human solidarity**  
National and local borders often have been established by violence. Consequently they may divide people who, without the border, would be able to mingle freely. Thus they may serve to increase xenophobia, racism, and the general separation of people from each other.
- \* **Source of instability**  
Borders drawn with little respect for the boundaries of ethnic, linguistic, or cultural groups fuel conflict.
- \* **Different concepts**  
Indigenous peoples' assumptions about property, land, and boundaries usually differ from European concepts. Yet within nation-states their values are often disregarded.
- \* **Strong vs the weak**  
Relationships along borders are often unequal, e.g., US-Mexico border. Peoples' ability to move across borders typically is closely related to their wealth. Some groups are confined to locations whose lack of resources make them nonviable, most notably South African blacks confined to white-designated "homelands." Some people are left stateless and others made refugees.
- \* **Mistreatment**  
Border officials often have a great deal of discretion, can use force freely, and are not accountable to those whom they mistreat. These are not simply the arbitrary actions of individuals; they manifest the implicit attitudes and policies of governments, which are often racist and exclusionary.
- \* **Shielding abusive practices**  
National sovereignty sometimes serves to protect those responsible for environmental damage that affects others or for the exploitation of cheap labor. Similarly, governments often invoke the inviolability of borders when they prevent their citizens from leaving or otherwise violate human rights.

The experience and conviction of Friends are challenged by these negative aspects of borders. As

they function today, borders clearly prevent many individuals from developing their potential. Where this happens, Quakers feel impelled to speak truth to power and to call authority to accountability. Thus, contemporary Quaker involvement with immigration and other border-related issues stands in a long tradition of solidarity with the excluded and the dispossessed (e.g., prisoners, Indians and Blacks in the US).

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*"Borders and their enforcement  
are frequently the focus of  
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of human rights."*

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Borders and their enforcement are frequently the focus of conflict, violence, or violation of human rights. In such circumstances, Friends are called by their peace testimony to seek nonmilitary management of borders and nonviolent resolution of conflicts arising over borders.

The actual functioning of borders often violates the Quaker sense of the right sharing of world resources. Although Friends may not always be in agreement on the policy implications of this value, they agree that the existence of vast disparities between nations and people--enormous accumulation of personal wealth while others lack basic necessities--is dehumanizing, first for the poor but ultimately for all. To the extent that borders reinforce these disparities they are a challenge to Quaker values.

Similarly, the functioning of borders may conflict with the contemporary awareness that we live on a single planet with limited resources. Our Quaker values of simplicity and harmony require responsible use of the world's resources regardless of borders.

## DILEMMAS

For the above reasons, some Friends conclude that borders as such are inimical to Quaker values and urge that they be abolished or become completely open: from this perspective individuals should be free to move to pursue their own fulfillment, unconstrained by limitations imposed by states. That position would seem to be consonant with a vision of a common humanity advanced by some Friends.



Such a view, however, may overlook the positive values outlined above, such as self determination of peoples, and may fail to come to grips with real dilemmas.

Even when values are shared, tensions may arise in the implementation of policies, as reflected in the following questions:

- \* How can the protective functions of borders be maintained so as to serve the weak vis-a-vis the strong, while still removing undesirable barriers between peoples?
- \* How can there be greater communication between peoples while diversity is maintained and enhanced?
- \* If in fact there cannot be completely free movement of peoples, on what basis should choices be made and limits set?

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*"If in fact there cannot be completely free movement of peoples, on what basis should choices be made and limits set?"*

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Such questions underscore our sense as a group that we are not in a position to offer definitive answers. Rather we believe we can point to some of the major questions that must be faced in present policies and to point toward a longer range vision of the role and function of borders.

#### POLICY PROPOSALS

As noted above, we believe the central question is not whether or not borders should exist, but how they should function so as to serve human beings. In that spirit, the working group made the following observations on policy matters related to borders.

\* In the management of international borders, we would urge support for the following policies and the values that underlie them: respect for human rights and international law, equal protection for citizens and non-citizens, priority consideration for those under duress or fleeing natural disaster, family unity, non-discriminatory application of immigration laws, the

right to preservation of language and culture, and uniform enforcement.

\* We urge that border issues be resolved with the widest possible participation of those involved.

\* We insist that the welfare and interests of human beings take precedence over political considerations in border questions. For example, family reunification and the wider interests of people in Cuba and the United States are human needs that should be given primary weight in considering the renewal of trade and diplomatic relations between these countries.

\* We urge that existing mechanisms for conflict resolution be utilized and strengthened. Here we have in mind regional organizations, the United Nations and its agencies, and non-governmental organizations. Abundant experience now indicates the positive benefits that flow from common scientific and cultural ventures by nations (e.g. the Arab League) and joint peace-making efforts (Contadora and Central American Peace Plan). As an ultimate authority for disputes between nations, the World Court should be supported and respected. Weaker parties should be able to make the stronger accountable.

\* We urge that the superpowers cease fueling conflict through proxy wars, military intervention or threats of intervention, arms sales, and political or diplomatic manipulation. The present period seems to offer opportunities for international agreements to curtail such actions.

\* We urge support for current promising approaches to resolving the conflicts between native peoples and nation-states. One such possibility which holds promise if it can be respectfully and successfully negotiated, is the current discussion and experimentation with limited autonomy in the negotiations between the people on the Atlantic coast and the Nicaraguan government. Another is the current constitutional negotiations in Canada which embody a movement toward self-determination and sovereignty by indigenous people (e.g. in their own health system). However, care must be taken not to apply the concept of autonomy to frustrate aspirations of peoples in situations of competing nationalisms and national identities, as in the case of the Palestinians.

\* We urge the establishment of transnational regulatory mechanisms to deal with problems that are

beyond the capacity of national governments. These are especially needed in dealing with the environment where the actions of individual governments and of corporations (which are frequently transnational in their scope and influence) can affect the lives and fates of all, and especially future generations (Chernobyl, toxic and nuclear waste, tropical rain forest).

\* Could even today's borders be cooperatively administered by the countries on the two sides of a border? At first glance such a proposal seems odd, since the very maintaining of a border station is an assertion of national sovereignty at a country's entry point. Yet travelers would certainly welcome streamlined, jointly administered border crossing procedures. More importantly, such cooperation at points of border crossings would itself be a powerful statement and a hint of future possibilities.

#### LONG RANGE VISION

Our vision for the future is not so much one in which there are no borders, but one where borders are the product of mutual agreement and are mutually acknowledged, are jointly administered and are disarmed. Such a vision, like any deep vision of peace, points toward a different kind of world.

We look forward to a time when individuals and families can reach their potential in their own land and are not driven elsewhere by intolerable conditions. That would entail a level of development where all have work or land and income sufficient to assure food, shelter, education, health care, and basic security. The conversion of human and natural resources from arms races to the meeting of human needs would be an essential element in such a shift.

In such a world, people would not be forced to migrate by a desperate need to survive.

Our vision is not that of a world without borders, but rather one in which nation-states no longer have absolute claims over individuals. One element in such a vision is an enhanced role for local government so that people would feel and act as citizens not only of their nation, but of their region, city, town or neighborhood. At the same time, we envision the further development of supranational authority to resolve equitably issues that transcend national borders.

Although these last observations are visionary, and intentionally so, we believe the seeds of such developments have already been sown and are sprouting to life even now.

\* \* \* \* \*

Mr. MAZZOLI. We have a vote call, Mr. Moreno. If you think you could get your testimony in within around 5 minutes, we could hear it. Well, we have to come back anyway. Let's just suspend for the vote, and then we will come back and take the testimony.

[Recess.]

Mr. MAZZOLI. The subcommittee will come to order.

At the time we suspended for the vote, Mr. Moreno was about to start his testimony.

Mr. Moreno, welcome.

STATEMENT OF MARIO MORENO, REGIONAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Mr. MARIO MORENO. Thank you very much, Mr. Chairman, Congressman Becerra.

My name is Mario Moreno. I am regional counsel with the Mexican American Legal Defense and Educational Fund here in Washington.

I would request that a copy of the Americas Watch "Frontier Injustice," a report published in May 1993, be included in my testimony. It is an excellent report.

Mr. MAZZOLI. Surely, without objection.

Mr. MARIO MORENO. Before I get into my prepared remarks, I just want to say that in my prior life I used to be a city planner down in Brownsville, TX. I spent a better part of 7 years there, and in the course of that stay, I made a number of friends from the ranks of the Border Patrol and Customs Service. I would like to relate one particular anecdote stuck in my mind from that period—this was back in 1972.

A Border Patrol friend of mine and I were going to lunch at a fast food place—I think it was a MacDonalds or something like that. As we were going into the MacDonalds, there was a little boy that was hustling shoeshines outside, and my friend did a double take, and said to me, "Did you see that little boy?" And I said, "Yes." He said, "You know, over the last 24 hours, I have taken that guy across the border three times."

That has always stuck in my mind inasmuch as it goes to the issue of the frustration that the Border Patrol faces on the border. I came to learn that these situations were common, every day agents see immigrants that they have dealt with before.

Within a 24-hour period, that little boy had come across three times with his shoeshine equipment, and he was escorted back three times. My friend's frustration was obvious but he was off duty, he had just come off a shift, and so we went on with our lunch.

The other thing I'd like to say is that José Moreno and I aren't related.

Mr. MAZZOLI. I wondered about that. If you were stacking the deck here, but that is OK.

Mr. MARIO MORENO. But he just says that he has got a cousin down in Laredo that is on the Border Patrol. Well, I happen to have a cousin down in Laredo on the Border Patrol.

Mr. MAZZOLI. You guys might be distantly related, after all.

Mr. MARIO MORENO. That is right. We may have come all this way to discover that we are actually related.



Mr. MAZZOLI. Well, we are known on our committee to be match-makers of a sort. We have had weddings, we have had babies born on duty here. So maybe we are getting families together, distant branches of a family.

Mr. MARIO MORENO. Yes.

With that, let me get to my prepared remarks.

I also have included in my remarks responses to comments made in previous panels, including this panel.

You know, there is an old saying in Texas—and I guess the saying is well known all over the United States if it ain't broke, don't fix it. Well, I am here to say that, as it relates to the complaint investigation procedures of the INS, it is broke, and it is seriously broke, and it is in desperate need of fixing, and that is why we are here, to strongly supporting H.R. 2119 as a reasonable solution.

On the first panel, Ms. Sale made a very convincing argument that there is really not that big of a problem with the complaint procedure. The statistics that she mentioned is one complaint in 17,000 arrests, is very compelling. That argument was reiterated again in the second panel.

If the system was working properly, if there were forms available for everybody with a complaint, and everybody was familiar with the process, there was extensive outreach in the community, there was no intimidation factor, there were no counterclaims that would discourage someone from coming in with complaints of abuse, I would be very impressed with Ms. Sale's statistics; I would be convinced that no problem exists. But to me, those complaints tell me something else, the low numbers tell me that the process is broke; and I am not alone in thinking this.

Back in 1977, the Office of Professional Responsibility of the Department of Justice conducted a 6-month audit of the internal inspection units of the INS, and among the deficiencies the examination found "serious defects in the INS process that prevent a prompt, thorough, and fair investigation of misconduct complaints filed against the INS."

In 1980, 3 years later, the U.S. Civil Rights Commission, in its report "The Tarnished Golden Door" devoted a whole chapter to this issue, chapter 8, of that report detailed the problems with regards to the complaints procedures, drawing very similar conclusions to those drawn from the Office of Professional Responsibility of the Department of the Justice.

Today this subcommittee is struggling with the same problem that was identified by the Civil Rights Commission and the Office of Professional Responsibilities, 13 years later.

Meanwhile, sadly, the violence against immigrants, both documented and undocumented, and U.S. citizens continue at our Nation's borders, ports of entry, and the systems for redress remain woefully inadequate.

Beneath the cold statistics of the bureaucratic analysis that are conducted by the GAO and the OIG, there are human faces. The American Friends Service Committee and Americas Watch, which is a division of Human Rights Watch have done an excellent job of putting a human face to this issue. Of course, that is why we have included the Americas Watch report to our testimony.

Over the last 3 years, these organizations have identified over 1,000 instances of abuse at our borders. The types of complaints, were articulated earlier in the opening comments by Congressman Becerra, so I won't repeat those. It bears repeating that these complaints were made by U.S. citizens and people that are legally here in the United States.

The INS, in their first panel, contends that the complaint process can be fixed by revamping the internal INS procedures. Well, we have looked at the problem, and we strongly disagree. We think that the problem has festered for decades with little improvement despite the thoughtful analysis of numerous governmental agencies including the INS.

We believe that it's time for a new approach to deal with this problem. We believe that it is time to establish an independent immigration law enforcement review commission. MALDEF supports H.R. 2119 wholeheartedly.

The civil rights abuses can only be eliminated by interjecting a strong sense of accountability into this process, that is currently missing from the process right now.

The reality is that people do not know where to file complaints, what the procedure is, where to get forms; oftentimes the forms are not available. There is a dissuasion at times by Border Patrol officers, persuading immigrants not to file complaints. Intimidation is involved; complainants are threatened with countercomplaints alleging resistance to arrest, thereby explaining why that individual happens to be battered. Most important deficiency of the complaint process is that the complaint is investigated and discipline is determined by the very agency that employs the accused. The INS has a vested interest in exonerating its agents. In essence it is the fox guarding the chicken coop.

We feel that the establishment of an independent commission would instill confidence among complainants, and the community at large. A fair and impartial opportunity to redress complaints of abuse would improve INS/community relations.

It's been 13 years since the publication of "The Tarnished Golden Door" report. Its obvious to MALDEF that a solution to this problem should not, and cannot, consist of revamping the current internal process within the INS alone.

I think that the first panel had some good ideas, like the suggested citizens advisory panel. I think that is a step in the right direction, but I don't think it goes far enough. The advisory panel would not have any investigative authority, and therefore is not going to be independent. I think that advisory panel idea is similar to the outreach section of Congressman Becerra's bill. It would promote outreach in the community. So in that respect, that panel would be one portion of the solution, but we feel that more needs to be done and that in and of itself is not going to solve the problem.

The first panel also mentioned the existence of an Internal Affairs Office that has been set up within the Department. The problem with that is that, you wind up with the same situation; you have the INS investigating itself and coming up with disciplinary action based on their determinations.

Acting Commissioner Sale stated that investigations were considered extra duty for INS staff. The quality of investigation will therefore depend on the amount of time that these section chiefs or regional officers are willing to devote to the investigation. If nothing else this procedure speaks to the lack of priority that this issue has within the INS.

Those are some of my comments and I would be more than glad to answer any questions that you may have.

Mr. MAZZOLI. Thank you, Mr. Moreno, and I thank all of the panelists.

[The prepared statement of Mr. Mario Moreno follows:]

PREPARED STATEMENT OF MARIO MORENO, REGIONAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Mr. Chairman and Members of the Subcommittee: My name is Mario Moreno, Regional Counsel of the Washington, D.C. office of the Mexican American Legal Defense and Educational Fund (MALDEF). On behalf of MALDEF I would like to thank you for the opportunity to provide testimony in support of the Immigration Law Enforcement Review Commission, H.R. 2119. In our view, this Review Commission is a critical remedy, given INS' long history of unresponsiveness and lack of accountability.

MALDEF is a national organization whose goal is to promote and protect the civil rights of Latinos in the United States through litigation, advocacy and leadership development in various substantive areas, including immigrant rights. MALDEF has successfully litigated various cases against INS over the past years. During that same time we have testified on numerous occasions before congress regarding immigration law reform, as those reforms affect the Latino community.

In February 1991, MALDEF, together with some thirty civil rights, human relations, clergy, attorneys, labor union officials and others from throughout the state of California visited the California-Mexico border on a fact finding mission in part to determine whether there was a pattern and practice of abuse of individuals' civil and human rights. As such, representatives spent three days at the border interviewing public officials, including INS representatives, human rights monitors as well as officials from Mexico and participated in public hearings where we heard testimony from victims and officials.<sup>1</sup> It is based upon this experience that we offer our testimony.

#### 1. ENFORCEMENT AUTHORITY AND LACK OF ACCOUNTABILITY

In 1977 the Office of Professional Responsibility of the Department of Justice conducted a 6-month audit of the internal inspections unit of the Immigration and Naturalization Service (INS).<sup>2</sup> Among other deficiencies the examination found serious defects in the INS complaint process that prevented a prompt, thorough, and fair investigation of misconduct complaints filed against INS employees.<sup>3</sup>

In 1980, three years later, the U.S. Commission on Civil Rights in its report "The Tarnished Golden Door"<sup>4</sup> devoted Chapter 8 to detail the problems with the INS complaint investigation procedures. In referring to abuses and other misconduct by immigration law enforcement officials the Commission stated:

This denial of rights can arise both when persons are unable or not allowed to exercise their constitutional rights and when due process protections are inadequate.

The Commission report went on to conclude:

The Commission . . . found an (INS) complaint system in need of improvement for effectively handling public complaints of employee misconduct. pg. 30

<sup>1</sup> MALDEF has also testified before the Independent Commission on the Los Angeles Police Department (Christopher Commission), has engaged in advocacy regarding law enforcement accountability and has litigated cases involving police practices.

<sup>2</sup> United States Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration*, U.S. Government Printing Office, September 1980, pages 158, at 117.

<sup>3</sup> Id. pg. 117.

<sup>4</sup> A report of the U.S. Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration*, September 1980, U.S. Government Printing Office. 158 pages.



Today this Subcommittee is struggling with the same problem identified by the U.S. Civil Rights Commission thirteen years ago. Meanwhile, sadly, the violence against immigrants (documented and undocumented), and U.S. citizens continue at our nation's borders and ports of entry, and the systems for redress remain woefully inadequate.

This human rights crisis has been well documented by the diligent work of America's Watch, a division of Human Rights Watch, and the American Friends Service Committee. Over the past three years these organizations have documented over 1,000 instances of abuse on the part of the agencies guarding the border.<sup>6</sup> These abuses have taken various forms, including beatings, improper searches, denials of due process, shootings as well as various forms of physical and verbal abuse and destruction of property.<sup>6</sup>

Almost one-half of the victims of these reported abuses are U.S. citizens, permanent residents and others with visas. The majority of victims, however, are undocumented individuals. That the Latino American population has been subjected to unfair treatment at the hands of INS has been well documented in *Murillo v. Musegades*.<sup>7</sup> In the Bowie High School case, litigation in which MALDEF was co-counsel, a federal court ruled that INS had engaged in a pattern and practice of violating federal constitutional rights and issued a preliminary injunction. There, INS agents routinely harassed, detained and questioned students and high school employees without any suspicion of undocumented status other than the Latino appearance of these individuals. INS, moreover, physically beat some of the named plaintiffs, ridiculed others and held a gun to the head of the local high school coach.<sup>8</sup>

Patterns of violence have emerged. INS agents, like other law enforcement officers have admittedly administered street justice to those who have either attempted to flee capture or who have challenged the authority of an officer. Supervisors tolerate and even encourage that behavior.<sup>9</sup> In fact, as a striking example of the dehumanization of immigrants, border patrol agents commonly refer to undocumented immigrants as "Tonks," the sound that their flashlight makes when it hits an immigrant on the head.<sup>10</sup>

INS has come under sharp criticism by government auditors and oversight committees for too many years. Within the past six months, these criticisms were again echoed. Those within the agency have stated: INS is ridden with "incompetency at all levels of command," a "chain of command [that] is illusory," a "total failure to properly employ and supervise staffs."<sup>11</sup> The Office of Inspector General has faulted INS for its indifference in screening employees, failure to train, supervise and discipline.<sup>12</sup> It states: "... INS' treatment of misconduct is spotty. Whether action is taken, and the severity of the punishment, if any, seems to be uneven and sometimes happenstance."<sup>13</sup>

INS' discipline of officers, according to INS personnel turns in part on the employee's relationship with his supervisor rather than upon a measure of the seriousness of the agent's actions. Thus, individuals who were involved with serious abuses have escaped discipline altogether, while other officers have been simply transferred.<sup>14</sup>

<sup>6</sup> See *Brutality Unchecked* Americas Watch (May 1992); *Frontier Injustice* Americas Watch (May 1993), copies of which are attached and incorporated by reference.

<sup>6</sup> *Id.*

<sup>7</sup> EP-CA-319-B (W.D. Tex., Dec. 1, 1992).

<sup>8</sup> Latino Americans were also singled out recently by INS in San Antonio Texas, where the MALDEF Regional Counsel was detained on a bus in a bus station and interrogated regarding his immigration status along with only those passengers who appeared to be Latino. Interview with Louis Wilmot. The mayor of the City of Pomona, one of the largest cities in the metropolitan Los Angeles area was also detained by INS agents presumably because of his Latino appearance. *Over the Line*, Los Angeles Times, September 2, 1993. A Latino television reporter has also been detained for questioning in Pomona, California, as have scores of others. *Id.*

<sup>9</sup> *Frontier Injustice*, *supra*, n. 2 at 11; McDonnell and Rotella, When Agents Cross Over, Los Angeles Times, (April 22, 1993).

<sup>10</sup> *Frontier Injustice*, *supra* n. 2 at 11; Rotella and McDonnell "A Seemingly Futile Job" Los Angeles Times (4/23/93).

<sup>11</sup> Memorandum from Raymond M. Momboisse [former General Counsel at INS] to Mike Lempres, Special Assistant to the Attorney General, dated July 26, 1989 quoted in Statement of Richard Hankinson, Inspector General, Department of Justice Before the Subcommittee on Information, Justice, Transportation and Agriculture of the Committee on Government Operations (March 30, 1993) at 7.

<sup>12</sup> *Id.* at 17.

<sup>13</sup> *Id.* at 22-23.

<sup>14</sup> *Frontier Injustice*, *supra* n. 2 at 24-25. The practice of failing to discipline officers for excessive force was common within the Los Angeles Police Department and the Christopher Commission found evidence that officers who had engaged in improper tactics were more often than not



The failure to discipline leads to the perpetuation of an attitude that officials can and do act with impunity.<sup>15</sup> This in turn tarnishes those officers who do perform their jobs professionally and destroys the very relationship of community trust which is necessary for effective law enforcement.<sup>16</sup>

## 2. THE CURRENT COMPLAINT SYSTEM IS SUBSTANTIALLY FLAWED

The internal mechanism for reviewing complaints logged against immigration law enforcement officials is seriously flawed. The system, which involves multiple levels has overlaps and gaps which permit officers to avoid discipline. These flaws are explicitly detailed in "Frontier Injustice".<sup>17</sup> In addition, many of these same flaws are identical to those identified by the U.S. Commission on Civil Rights in the "Tarnished Golden Door". These shortcomings which existed thirteen years ago have obviously not been remedied. In the face of this long history of inaction, there is no reason to believe now that absent a systemic change, INS will voluntarily remedy the defects. There is some question as to whether the INS is capable of reforming the system given its serious mismanagement problems.

The flaws in the current internal complaint system include, but are not limited to the following:

1. Most complaints are investigated by either INS managers or those formerly employed by the agency. Thus, there is no provision for independent investigation or the perception of an independent investigation. Indeed, this situation was cause of consternation for the U.S. Commission in Civil Rights.<sup>18</sup>

2. Many individuals are unaware of the procedure, and the procedure itself is not readily accessible.<sup>19</sup> Indeed some advocates have likened the process to one of the best kept national secrets. In addition, there is no mechanism in place to insure that language interpretation is provided.

3. Failure on the part of Civil Rights Division to investigate whether to prosecute. It is not altogether clear based upon our experience that the FBI and DOJ adequately investigate. Indeed, it appears based on several reports that the agency does not routinely interview the victim or witnesses.<sup>20</sup>

4. Failure on the part of OIG to conduct investigation once Department of Justice declines to prosecute. Despite the fact that the standards of proof for criminal prosecution and employee discipline differ dramatically, OIG will decline to take any further action or defer directly to INS.<sup>21</sup> INS' record on this score is woeful.

That there has been a severe underreporting of complaints strongly appears to be the direct result of the inaccessible complaint process, agents actively dissuading individuals from filing complaints, the "code of silence", as well as threats on the part of officers to file criminal charges against victims.<sup>22</sup>

## 3. THIS BILL WILL REMEDY SERIOUS SHORTCOMINGS IN THE CURRENT PROCEDURE

Most commentators and experts in law enforcement concur that complaint procedures must be open and accessible in order for law enforcement to be effective. The openness of the process instills both public confidence and trust, and promotes moral among officers. It is also key to effective INS law enforcement, given the profound lack of trust and confidence which characterizes that agency's relationship with the Latino community.

H.R. 2119 provides for an open process. Provisions of this bill ensure the appropriate dissemination of information regarding the complaint procedure, and create accessibility previously lacking. The bill further promotes accountability by ensuring that discipline will no longer be solely a function of the subjective relationship between a supervisor and an employee, but one subject to public scrutiny (with adequate protections for law enforcement personnel) as befits any governmental agency.

rewarded with stellar performance evaluations. In addition, the practice of transferring problem officers was common practice in the Los Angeles Police Department. Christopher Commission Report.

<sup>15</sup> *Frontier Injustice*, supra n. 2 at 40-41.

<sup>16</sup> Most law enforcement is moving toward models of effective community based policing. These models are based upon community trust and respect. Christopher Commission. See also U.S. Commission on Civil Rights, INSERT CITE.

<sup>17</sup> Note XX.

<sup>18</sup> U.S. Commission, supra note XX at 125.

<sup>19</sup> *Frontier Injustice*, supra n. XX at 36-63.

<sup>20</sup> See testimony of Lynn Marcus before the U.S. Commission on Civil Rights presented in San Diego, California on April 17, 1993.

<sup>21</sup> *Id.*

<sup>22</sup> *Frontier Injustice*, supra n. 2 at 30-33.

The provision for public hearing is also crucial for accountability. Indeed these hearings are important for those victims who are not represented by attorneys in damage actions. The hearing process itself would remove the shroud of secrecy that otherwise characterizes the OGI process. The early warning detection system is also intended to alert supervisors to problems before they become acute so that recommendations regarding training and counselling can be made. Finally, provisions of the bill will protect those who come forward to complain from retaliation. This protection is critical given that victims are more often than not members of the most vulnerable segment of our community.<sup>23</sup>

#### 4. CONCLUSION

In conclusion MALDEF support wholeheartedly supports H.R. 2119 and the establishment of an independent immigration review commission. Civilian review commissions of the type proposed here have found acceptance in over 60% of the fifty largest cities in the United States. Their creation is a benefit to the community, and to the law enforcement agencies alike.

Its important to remember that the responsibilities of enforcing the immigration laws of this country must never justify violations of the civil and constitutional rights of U.S. citizens and others here lawfully and in an undocumented status.

Thank you for the opportunity to present this testimony.

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<sup>23</sup> An individual who has been subjected to violence by INS could challenge a deportation by way of a motion to suppress. As such, the immunity granted by the statute is not extreme, but entirely consistent with the dictates of the Constitution and due process. See e.g., *Choy v. Barber*, 279 F.2d 642 (9th Cir. 1960); *Navia-Duran v. Ins.*, 568 F.2d 803 (1st Cir. 1977).

# Americas Watch

A DIVISION OF HUMAN RIGHTS WATCH

May 13, 1993

Vol. V, No. 4

## UNITED STATES

### FRONTIER INJUSTICE:

Human Rights Abuses Along the U.S. Border with Mexico  
Persist Amid Climate of Impunity

#### I. INTRODUCTION

After a follow-up investigation conducted nearly a year after issuing its first report condemning human rights violations along the U.S. border with Mexico (*Brutality Unchecked: Human Rights Abuses Along the U.S. Border with Mexico*, May 1992), Americas Watch concludes that serious abuses by U.S. immigration law enforcement agents continue and that current mechanisms intended to curtail abuses and discipline officers are woefully inadequate.

During the past year, the Immigration and Naturalization Service (INS), its enforcement body, the Border Patrol, and the Customs Service have been subjected to heightened scrutiny from legislators, human rights groups, community

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#### AMERICAS WATCH

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activists, and the press concerning the conduct of their agents.<sup>1</sup> Yet the agencies have failed to introduce measures needed to curtail agent misconduct or to hold abusive agents accountable.

While the U.S. Congress has taken steps to address this problem—by holding hearings and proposing independent review of abuse allegations—the Clinton administration has yet to appoint an INS Commissioner and has failed to articulate a new approach to this ongoing problem. Americas Watch calls upon the Clinton administration to apply international human rights standards—which the administration has stated are a key component in its foreign policy decisions—here in the United States by appointing an INS Commissioner who will take concrete steps to end the brutality.<sup>2</sup>

The past year has not been a good one for immigration law enforcement agencies,<sup>3</sup> particularly the Border Patrol. Two highly publicized trials—one involving an agent accused of murdering an unarmed Mexican national, the other involving an agent accused of raping two women—revealed some of the many shortcomings of the internal review procedures used by the INS. (See, Section II) When those procedures—generally hidden from public scrutiny—were exposed, they confirmed what immigrant and human rights activists have been saying for years: there is no accountability for INS agents.

This report is based on a March 1993 fact-finding trip along the 2,000 mile U.S.-Mexico border, as well as information gathered from U.S. government officials, U.S. and Mexican human rights organizations, press accounts, lawyers representing victims and their families, and witnesses and victims themselves. Americas Watch also spoke with relevant Department of Justice officials, representatives of the INS, and U.S. Customs, and Border Patrol agents in the field.

Americas Watch finds that beatings and other forms of mistreatment are still common during the arrest and detention of undocumented immigrants, U.S. citizens and legal residents.<sup>4</sup> While less frequent than beatings and mistreatment, unjustified shootings and sexual assaults also occur. This report documents physical abuses during the apprehension and detention of suspected undocumented immigrants, abuses at checkpoints and during roadside stops, overzealous enforcement at schools, immediate deportations, and the unauthorized use of firearms.

It also examines the inadequate procedures for receipt and review of complaints alleging violations by U.S. immigration law enforcement agents. These procedures, as well as obstructive actions by Service agents, guarantee that complaints are underreported. In the case of the INS, even if a complaint is filed, the investigations mechanisms used are plagued by overlapping jurisdiction and broad gaps that

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<sup>1</sup> In this report, for the first time, Americas Watch examines allegations of abuse committed by Customs agents along the border. Although the abuses committed by the Customs Service do not appear to be as widespread or as serious as those of the Border Patrol, Americas Watch has documented several instances of abusive conduct by Customs agents. Further, in those cases, victims who sought to complain found that the agency frequently attempted to dissuade them from doing so.

<sup>2</sup> Similarly, President Clinton should instruct the Customs Commissioner to take tangible steps to curtail human rights abuses by agents in the field and to insist on accountability for abusive agents.

<sup>3</sup> This report shall refer to INS agents, Border Patrol agents, and Customs agents collectively as immigration law enforcement agents. We are aware that the Customs Service is primarily tasked with inspectional duties rather than immigration law enforcement, but its agents are cross-designated to carry out limited functions usually assigned to INS personnel.

<sup>4</sup> Verbal abuse of suspected undocumented immigrants by INS and Customs agents is so common that we have not included allegations of it in this report.

result in inadequate investigations and, ultimately, impunity for abusive agents. Both systems are further undermined by near total secrecy and, in the case of the INS, excessive discretion in the disciplinary process that fosters cronyism on the part of supervisors in the application of appropriate sanctions.

More than a decade ago, a report issued by the U.S. Commission on Civil Rights considered civil rights issues in the immigration process and the mechanisms in use by the INS to address these concerns.<sup>5</sup> That report evaluated the INS investigation procedures for complaints alleging violations of the rights of immigrants by INS agents. The report found serious problems in the complaint procedures and recommended numerous reforms to the INS. More than a decade later, the structural changes recommended by the Civil Rights Commission have not been implemented. In fact, this past April, Regional Border Patrol Chief Gustavo de la Viña testified before the Civil Rights Commission that, to the best of his knowledge, there has been no change in the complaint procedures since 1980.<sup>6</sup>

In recent years, changes in U.S. law and policy have led to a climate along the border that is even more likely to contribute to serious abuses of human rights. In 1986, with the passage of the Immigration Reform and Control Act and the Anti-Drug Abuse Act, the INS was given enhanced arrest authority and increased resources and personnel.<sup>7</sup> Four years later, the Immigration Act of 1990 incorporated a provision authorizing broader arrest powers for the INS as part of the federal government's efforts to interdict narcotics entering the United States.<sup>8</sup> Even though the INS is now responsible for interdicting drugs, Border Patrol agents engaged in drug interdiction do not receive adequate training or supervision. As a Border Patrol agent testified last December, "they don't train us at all in drug interdiction."<sup>9</sup>

Frustrated by the unwillingness of immigration law enforcement authorities to rein in abusive agents, communities along the border have taken matters into their own hands. In July 1992, the El Paso City Council created a Border Patrol Accountability Commission. The creation of similar civilian review commissions is under consideration in cities throughout the Southwest.

In light of the overwhelming deficiencies described in this report and in our May 1992 report, Americas Watch supports the creation of an independent federal commission to receive complaints of abuse, review those complaints, hold public hearings when warranted, and pass its findings to the INS or Customs Service for disciplinary action.<sup>10</sup>

<sup>5</sup> U.S. Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration* (Washington, D.C. 1980).

<sup>6</sup> Testimony of Regional Border Patrol Chief Gus de la Viña before the U.S. Commission on Civil Rights, April 16, 1993.

<sup>7</sup> Americas Watch, *Brutality Unchecked*, p.8.

<sup>8</sup> *Ibid.*

<sup>9</sup> *United States v. Michael Andrew Elmer*, CR-92-456-TUC-JMR (D. Ariz. 1992) (Transcripts of Proceedings, December 9, 1992), (testimony of Thomas Watson) p. 86 [hereinafter *Elmer* transcripts].

<sup>10</sup> On May 13, 1993, Representative Xavier Becerra (D-CA) introduced the "Immigration Enforcement Review Commission Act," which would create an independent review commission to receive complaints, review allegations, and recommend disciplinary sanctions, when warranted. Initial co-sponsors of the bill included Representative Don Edwards (D-CA), Representative José Serrano (D-NY), Representative John Conyers (D-MI), Representative Ed Pastor (D-AZ), Representative Esteban Torres (D-CA), and Representative Luis Gutiérrez (D-IL).

## II. THE SYSTEM'S FAILURES EXPOSED: THE CASES OF MICHAEL ELMER AND LUIS SANTIAGO ESTEVES

Last year's trials of Border Patrol agents Michael Elmer and Luis Santiago Esteves provided an abundance of information about the practices of Border Patrol agents in the field—information that is usually concealed from the public. Elmer was tried for murder and acquitted; Esteves was tried for rape and convicted.

Although the outcomes of the trials were different, both exposed serious problems with the Border Patrol's internal disciplinary system. In both cases, agents against whom there were serious prior allegations of misconduct remained on the force with predictably tragic consequences. As we detail below, these agents continued on active duty because the Border Patrol failed to investigate complaints adequately and sanction culpable agents.

The Elmer trial produced an additional damning revelation about the Border Patrol: agents routinely disregard the INS' firearms policy, thereby placing the lives of those with whom they come into contact, as well as their own lives, in serious danger. (*See*, Section III.E.1.)

### A. Border Patrol Agent Michael Andrew Elmer<sup>11</sup>

On the evening of March 18, 1992, a motorist alleges that Tucson Border Patrol Agent Michael Elmer assaulted him, with the motorist requiring stitches for one of his wounds.<sup>12</sup> Later that night, witnesses allege that Elmer shot at a group of 30 undocumented immigrants, wounding one of them.<sup>13</sup> In violation of INS policy, neither of the incidents was reported by Elmer or the other agents who were present. Complaints lodged by the victims were ignored. In fact, neither of these incidents—nor allegations that Elmer had consumed and sold drugs seized during a raid along the border—would have been discovered if Elmer had not shot and killed an unarmed Mexican national in June 1992.

On June 13, 1992, Border Patrol Agent Thomas Watson reported the fatal shooting of Darío Miranda Valenzuela by his partner, Agent Elmer. In doing so, he broke the Border Patrol's traditional code of silence regarding agent abuse. The ensuing investigation and trial revealed the Nogales border region to be a modern day Wild West, where agents with little training and no supervision shoot with impunity at suspected drug smugglers, in violation of INS policy. (*See*, section III.E.1.)

According to the facts revealed at the trial, on the afternoon of June 12, 1992, Agents Elmer, Watson and three other Border Patrol agents were patrolling a remote canyon near Nogales, Arizona. Agents Elmer and Watson pursued three men whom they believed to be lookouts for drug smugglers. Watson fired warning shots over the head of one of the men they encountered, in violation of INS

<sup>11</sup> This account is based on information provided by the attorneys representing Darío Miranda Valenzuela's family—Jesús R. Romo Véjar, Isabel G. García de Romo, Michael W.L. McCrory, and Richard J. Gonzales, transcripts from the case of *United States v. Elmer*, [CR-92-456-TUC-JMR] (D. Ariz. December 1992)], and press accounts.

<sup>12</sup> Claim for Damage, Injury, or Death, filed by Rene Romero with the INS, February 4, 1993.

<sup>13</sup> *Elmer* transcripts, December 4, 1992, (testimony of Francisco Salgado-Muñoz), p. 25.



firearms policy.<sup>14</sup> The three men then fled toward Mexico. Elmer shot at one of the men, Darío Miranda Valenzuela, a dozen times. Two bullets struck Miranda, who was unarmed, in the back.

According to Watson's trial testimony, the two agents did not call for medical assistance, but instead considered planting a weapon on Miranda so it would appear to be a legitimate shooting. They also discussed how to dispose of the victim's body. Watson also testified that, when Elmer told him he had shot Miranda, "he was happy, the best way I could describe it, like somebody that had shot their first deer. He was elated, pumped up, kind of brag [sic], I got one."<sup>15</sup> After shooting Miranda, Elmer shot at one of the other fleeing men. Elmer then dragged Miranda—who doctors estimate may have lived for 30 minutes after he was shot—into a gully and hid him behind a tree trunk.

Agents Watson and Elmer then joined the three other agents in the area and returned to the Border Patrol station without reporting the shooting. Instead, after their shift ended, the agents drank beer and talked in a parking lot across the street from the station.

Watson reported the shooting the next day, June 13, approximately 15 hours after it occurred. In his statement, Watson explained that he waited because he was afraid that Elmer would harm him if he reported the shooting the day it happened.

Elmer was arrested and became the first Border Patrol agent to be charged and tried for murder. Elmer's lawyer successfully portrayed Elmer's shooting of the unarmed man as an act of self-defense in a dangerous area of the border.<sup>16</sup> Although acquitted on murder and other charges on December 16, 1992, Elmer is now facing charges stemming from a shooting incident in March 1992.<sup>17</sup> (See below). On March 25, 1993, Miranda's family brought a wrongful death action against the U.S. government. They also filed a civil rights suit against the five agents involved in the June 12 shooting.

In April 1993, Watson was fired by the Border Patrol for waiting 15 hours before reporting the killing and other violations. He told the *Los Angeles Times*, "It's a big cover-up; I broke the code of silence and now they want to get back at me.... I knew I was doing the right thing by turning him in for murder, even though I embarrassed them."<sup>18</sup> The three other agents in the vicinity at the time of the Miranda shooting were not disciplined for failing to report the shooting and are believed to remain on duty.<sup>19</sup>

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<sup>14</sup> INS Firearms Policy states, in part, "Firing a firearm should be done only with the intent of rendering the person at whom the firearm is discharged incapable of continuing the activity that caused the officer to shoot. Therefore, the firing of warning shots is prohibited." INS Administrative Manual Section 4210, p. 5.

<sup>15</sup> *Elmer* transcripts, December 9, 1992, (testimony of Thomas Watson), p. 43.

<sup>16</sup> One of the ironies of the trial lies in the allegations—uncovered during the investigation of Elmer after the Miranda killing, yet excluded from evidence during the murder trial—that Elmer had stolen, sold, and used drugs. While Elmer's successful defense was based largely on the image of Miranda as a drug scout, Elmer, carefully portrayed as an anti-drug hero, may have been involved with drugs.

<sup>17</sup> Tessie Borden, "Jury clears border agent in alien's killing," *Arizona Daily Star*, December 17, 1992.

<sup>18</sup> Sebastian Rotella and Patrick J. McDonnell, "A Seemingly Futile Job Can Breed Abuses by Agents," *Los Angeles Times*, April 23, 1993, [hereinafter Rotella and McDonnell, "A Seemingly Futile Job"].

<sup>19</sup> Although internal disciplinary sanctions are kept secret, the attorneys for Miranda's survivors are unaware of any punishment or dismissal imposed on the three agents.

During the investigation into the Miranda shooting other abuses involving Agent Elmer came to light:

**Rene Romero:** Rene Romero was stopped by Border Patrol agents while driving in southern Arizona near Tucson at approximately 8:00 p.m. on March 18, 1992. As he later learned when he saw Elmer's photograph in the newspaper, one of the agents who stopped him was Elmer. According to Romero, Elmer pulled him from his car, threw him to the ground, handcuffed him, kicked him, hit him on the head with his gun and threatened to kill him.<sup>20</sup> Romero states that Elmer then pulled Romero's pants down and told him to "bend down as if [you're] going to get fucked," and then told Romero to "open up his ass." After he was searched, Elmer hit him in the stomach and ribs. The agents then took Romero to the Border Patrol station in Nogales.

Romero requested medical assistance, but the agents ignored him. More than five hours after his arrest, a Drug Enforcement Administration (DEA) agent interviewed him, at which time he again requested medical attention.<sup>21</sup> Approximately 24 hours later, Romero was taken to Tucson and treated at the Federal Correctional Institution. He received five stitches for his head wound, which had become infected.

On February 4, 1993, Romero filed a personal injury claim against the Border Patrol. The claim states that the beating resulted in injuries to his upper body, neck and head. The claim also asserts that Romero suffered mental distress and humiliation.

**Hindz Ridge shooting:** At approximately 10:00 p.m. on March 18, 1992, roughly two hours after the Romero incident, Border Patrol agents were patrolling the Hindz Ridge area east of Nogales looking for drug smugglers. They were directed to an area where a surveillance team had spotted a group of 30 people. Six agents pursued the group, with Agent Elmer encountering them first. He began shooting between the legs and feet of the individuals he encountered, and shouting at them.<sup>22</sup> Eventually Elmer realized that he was shooting at a group of immigrants, not smugglers. (Whether or not the group was made up of drug smugglers or immigrants, Elmer's alleged actions were a violation of INS policy.)<sup>23</sup> Francisco Salgado-Muñoz, one of the undocumented immigrants, later testified during the Elmer trial that he had been shot in the stomach and leg during the attack.<sup>24</sup>

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<sup>20</sup> Claim for Damage, Injury, or Death, filed by Rene Romero with INS, February 4, 1993.

<sup>21</sup> Romero has stated that he reported the mistreatment he received to the Border Patrol and the DEA agent who interviewed him.

<sup>22</sup> *Elmer* transcripts, December 3, 1992, (testimony of Andrew Priesner) and December 4, 1992, (Aurelia Serrano-Barajas and Francisco Salgado-Muñoz).

<sup>23</sup> INS policy states, in part, "A firearm may be discharged only as a last resort when the officer reasonably believes that there is the threat of imminent danger of loss of life or grievous bodily harm to himself or to another person. Any use of firearms by Service personnel must be within the guidelines of this policy, and be legally justifiable and reasonable under the circumstances." INS Administrative Manual Section 4210, p. 4.

<sup>24</sup> *Elmer* transcripts, December 4, 1992, p. 25 (testimony of Francisco Salgado-Muñoz).

None of the agents present during the shooting reported it.<sup>25</sup> Two of the immigrants reported the shooting to agents at the Border Patrol station,<sup>26</sup> but either those agents did not report the shooting to the Office of the Inspector General (OIG), or the OIG decided not to investigate. Under either scenario, the complaints reporting procedure failed. As a result of the information disclosed during the investigation and murder trial of Elmer, he is now awaiting trial on aggravated assault charges relating to the March 18, 1992 shooting.<sup>27</sup>

#### B. Border Patrol Agent Luis Santiago Esteves<sup>28</sup>

Evidence indicates that Luis Santiago Esteves' problems with law enforcement began years before he donned a Border Patrol uniform. While in the Army, Esteves was arrested for allegedly beating his first wife. Charges in that case were dropped.<sup>29</sup> When Esteves was prosecuted for the rape of two women last summer, his second wife, Lucille Maldonado testified that he had raped her, and threatened to rape her 10-year-old daughter.<sup>30</sup> Maldonado told the *Los Angeles Times*, "If they had done a real background [check], I don't think he would have made it," into the Border Patrol.<sup>31</sup>

Once on the force, Esteves was reported to have been involved in three incidents of sexual misconduct committed against women whom he first encountered while on duty. The first incident

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<sup>25</sup> INS policy states, in part, "Any employee who discharges a firearm, or is involved in or observes a reportable shooting incident, shall verbally notify the first-line supervisor as soon as time and circumstances permit, but before the officer goes off duty....Employees who discharge a firearm, or are involved in a shooting incident, shall be required to provide a written report of the incident within sixteen (16) hours of the incident. Any other employee who observes a shooting incident, but does not discharge a firearm or is not directly involved in a shooting incident, shall be required to provide a written report of the incident before the termination of the shift." INS Administrative Manual Section 4210, pp. 9-10.

<sup>26</sup> *Elmer* transcripts, December 3, 1992, (testimony of Andrew Priesner), p. 17; December 4, 1992, (testimony of Aurelia Serrano-Barajas); p. 12; and (testimony of Francisco Salgado-Muñoz), p. 30.

<sup>27</sup> Tessie Borden, "Jury clears border agent in alien's killing," *Arizona Daily Star*, December 17, 1992.

<sup>28</sup> This summary is based on: review of the court records in *People v. Luis Santiago Esteves*, Case No. 14866, Imperial County, California (1992); interview of Mary Anne Carter-Birkman, Deputy District Attorney of Imperial County and prosecutor in the case on March 22, 1993, and an April 9, 1993 telephone interview of Edilma Cadilla.

<sup>29</sup> Patrick J. McDonnell and Sebastian Rotella, "When Agents Cross Over the Borderline," *Los Angeles Times*, April 22, 1993, [hereinafter McDonnell and Rotella, "When Agents Cross Over"].

<sup>30</sup> Americas Watch Interview with Mary-Anne Carter-Birkman, March 22, 1993; McDonnell and Rotella, "When Agents Cross Over."

<sup>31</sup> McDonnell and Rotella, "When Agents Cross Over." The *Los Angeles Times* study of the Border Patrol concluded that in its efforts to expand personnel following the Immigration Reform and Control Act of 1986 (IRCA), the Border Patrol has often failed to perform adequate background investigations. The *Los Angeles Times* article details a number of cases of individuals with criminal backgrounds who were able to become Border Patrol agents, some with predictably disastrous results. *Ibid.*



occurred on October 6, 1989. On that date, according to the court records,<sup>32</sup> Edilma (Ima) Cadilla, a teacher and U.S. citizen, was travelling north along Highway 86 in Imperial County, California, when she was stopped at an immigration checkpoint. Agent Esteves inquired about her citizenship, determined that she was a U.S. citizen, and let her vehicle pass.

About five miles down the road, Ms. Cadilla noticed a vehicle approaching with flashing lights. She pulled over to the side of the road. The vehicle turned off all lights, except the parking lights, and Esteves got out of the car and approached her, shining a bright flashlight in her face. Esteves asked Cadilla several questions which she answered, believing them to be official in nature. Esteves then asked Cadilla for her telephone number and talked to her about himself for fifteen minutes.

According to Cadilla, her boyfriend called Esteves' supervisor at the El Centro Border Patrol office the following morning to complain. The supervisor told him that if Esteves called, he should report it. At about 10:30 p.m. on October 9, 1989, Esteves called Ms. Cadilla. He asked her if she would be home for the weekend, and she said no.

Esteves told her that was "too bad" because he wanted to take her out dancing, get drunk and have her "sexually abuse his body." She told him she had a boyfriend and he then asked if she could fix him up with one of her friends. Esteves continued talking to Ima for approximately one-half hour. At that end of the call, Ima asked that Esteves not call her again.<sup>33</sup>

After this call, Cadilla told Americas Watch, she called the supervisor with whom her boyfriend had spoken. She explained to him what had happened and he indicated that he knew Esteves. He reassured her that, as punishment, the Border Patrol would move Esteves from the checkpoint where Cadilla had been stopped to the Calexico, California border crossing. According to the *Los Angeles Times*, the Border Patrol took no disciplinary action against him.<sup>34</sup>

Two months later, on December 16, 1989, twenty-year-old María was stopped by Esteves in Calexico,<sup>35</sup> who checked her immigration papers. Esteves, in uniform and driving a Border Patrol vehicle, asked María for her phone number, and then asked her out for a date that evening. Later that day she called him and left a message on his answering machine that she could not go out with him. After work, María went shopping. Esteves, still in uniform, went to her workplace and found out where she was shopping. He found her there. María agreed to go out with him, but said that he first would have to take her to her mother's house for permission. Esteves said that he would have to go to his house first so that he could change clothes. Once at Esteves' house they exchanged small talk.

Then Esteves told her he wanted her to "be with him." At this point María describes him "changing" in his attitude and he became angry. He told her she had to have sex with him. He told her to take a shower. Esteves positioned a gun on each side of the bed on two nightstands....<sup>36</sup>

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<sup>32</sup> The court records referred to throughout the discussion of Agent Esteves are from *People v. Esteves*, (Case No. 14866, Imperial County, California, 1992), p. 40 [hereinafter, *Esteves*]. The account of the harassment of Ms. Cadilla is based on sections of the Plaintiff's (State of California's) Opposition to Defendant's Motion to Sever in *Esteves*.

<sup>33</sup> *Ibid.*

<sup>34</sup> McDonnell and Rotella, "When Agents Cross Over."

<sup>35</sup> To protect the privacy of the victims, their names have been changed in the following accounts.

<sup>36</sup> People's Statement in Aggravation Pursuant to Penal Code § 1170(b), *People v. Esteves*, pp. 2-3.

Esteves then told María to take her clothes off. Fearful because of the tone of his voice and the location of the two guns, she complied.<sup>37</sup> Esteves then proceeded to force an object into her vagina, placed his hands into various parts of her body, orally copulated her and forced her to have intercourse with him. María testified that she was afraid and never consented to any of the sexual acts. When Esteves left the room, María fled from the house, climbing a six foot fence and breaking her ankle in her haste to get away. Dressed only in Esteves' robe which she grabbed while heading out the door, she stopped a passing car and cried for help.<sup>38</sup>

Once in the street, María was assisted and taken in by witnesses who notified the police. Shortly thereafter, Esteves was arrested and the local District Attorney's Office filed rape charges against him. While the case was pending, Esteves was suspended from the force. However, María failed to appear in court for Esteves' preliminary hearing. The District Attorney's Office was forced to drop the charges against Esteves for lack of a prosecution witness. Despite the evidence against Esteves, the Border Patrol reinstated him. Esteves returned to active duty nearly six months before the FBI completed its investigation into the incident.<sup>39</sup>

In July 1991, Esteves was arrested again. This time he was charged with the rape of another woman, seventeen-year-old Rosa, whom he had stopped while on duty. According to Rosa's testimony,<sup>40</sup> on June 23, 1991 she and her mother were standing on the U.S. side of the border fence in Calexico talking to her grandmother and her sister who were on the Mexican side of the fence. Esteves, in uniform, approached the women and asked for their immigration papers. Esteves spoke with Rosa's mother for some time, and found out that Rosa had an upcoming deportation hearing. He offered to assist her in that hearing. The following day, he called her and told her not to worry about the deportation hearing. The next day, Rosa reports that he took her out for a ride. On June 28, Esteves took Rosa out again. He picked her up at 10:45 p.m., and bought her three mixed drinks. He then took her to the vacant apartment of a Border Patrol agent friend.

Rosa testified that shortly after they arrived, Esteves told her to take off her clothes. At that point, she indicated, Esteves became a different person. According to her testimony, he ordered her to masturbate. When she refused, he placed his hand on his gun. She then complied. Rosa testified that throughout the encounter, Esteves repeatedly slapped her and at one point he punched her. Rosa contends that Esteves then sodomized her. At one point he told her, "I know what I'm doing. And I am capable of everything and if I want I can rape your mother."<sup>41</sup> According to Rosa's testimony, Esteves then told her that he wanted to sell Rosa to his friends. Finally, he told her that he wanted to have sex with her and another woman.

Rosa reported this assault to the police, who asked her to arrange a meeting with Esteves; herself and an undercover California Highway Patrol officer (who posed as her friend) at a local hotel.

<sup>37</sup> People's Opposition to Defendant's Motion to Sever, *People v. Esteves*, pp. 38-39.

<sup>38</sup> This account is taken from María's testimony, as it is summarized in People's Statement in Aggravation Pursuant to Penal Code § 1170(b), *People v. Esteves*, pp. 2-3.

<sup>39</sup> McDonnell and Rotella, "When Agents Cross Over."

<sup>40</sup> The account that follows is based on Rosa's testimony at Esteves' rape trial. At that trial, Esteves was acquitted of the charges involving Rosa, and convicted of those involving María.

<sup>41</sup> People's Opposition to Defendant's Motion to Sever, *People v. Esteves*, p. 37.

Although this sting operation failed, the police arrested Esteves. The District Attorney's Office prosecuted Esteves for the alleged rape of María and Rosa. Esteves was acquitted of the rape of Rosa, but the information she provided to authorities led to Esteves' arrest and conviction on three counts of felonious sexual misconduct against María, for which he was sentenced in July 1992 to 24 years in prison.<sup>42</sup>

Unfortunately for both María and Rosa, this judicial resolution of Esteves' abusive career with the Border Patrol came too late. Had the Patrol thoroughly responded to Ima Cadilla's allegations two years earlier, the incidents involving both women might have been prevented. Unfortunately, as with Agent Michael Elmer, it was not until serious criminal charges were brought by prosecutorial authorities—with Esteves, for the *second* time—that the Border Patrol effectively recognized that Esteves was a problem agent.

### III. ABUSES CONTINUE

The cases documented in this section represent instances of abuse which have occurred during the period after that covered by our last report, *Brutality Unchecked*. They date from January 1992 to the present. Based on our fact-finding mission, Americas Watch concludes that serious abuses continue to be committed by INS agents, and that abuses have also been committed by Customs agents in the course of their duties.

The cases documented in this report are not an exhaustive compilation of abuses since 1992. Instead, they represent the incidents that Americas Watch was able to document during a recent fact-finding trip and follow-up efforts. As we explain in Section IV, there are several important reasons why cases are systematically underreported to both governmental and non-governmental sources. For those reasons, Americas Watch suspects that the cases described in this section represent only a portion of the total number of abuses committed during the period examined. Nonetheless, these cases, and the response of immigration authorities to complaints lodged by victims, stand as an indictment of the operations of the forces investigated.

#### A. Physical Abuses During Apprehension and Detention

As we detail below, it is not uncommon for Border Patrol agents to abuse the rights of undocumented immigrants during their apprehension. The Border Patrol's assigned duty of pursuing and detaining undocumented immigrants is undoubtedly a difficult task. And, because many of those detained and returned to Mexico often re-enter the United States, the work of the Border Patrol can often seem futile. Unfortunately, the frustration which this apparent futility causes is often taken out on the undocumented, in many ways the ideal victims for the Border Patrol agent since they may be perceived by the agent as the cause of his frustrations. Additionally, the undocumented provide an easy target—they are close and defenseless. Nonetheless, no matter how great the frustration of Border Patrol agents may be, the abusive treatment that its officers sometimes afford to undocumented immigrants is inexcusable.

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<sup>42</sup> Esteves was convicted of Forcible Rape in violation of California Penal Code § 261(a), Forcible Oral Copulation in violation of California Penal Code § 288a(c) and Penetration by Foreign Object in violation of California Penal Code § 289(a). People's Statement in Aggravation Pursuant to Penal Code § 1170(b), *Esteves*, pp. 1-2.

One particularly common manifestation of the discharge of frustrations by Border Patrol agents is the practice of assaulting immigrants who attempt to flee from agents. Sources told Americas Watch that, if an agent is forced to chase a suspected undocumented immigrant, he is likely to beat the detainee once he or she is caught. At a minimum, a detainee who makes an agent chase him or her will likely be detained longer as a punishment. One Border Patrol agent, who has been with the Border Patrol and INS for 31 years, told Americas Watch that agents try not to abuse detainees, but hold them longer for making them run. A San Diego-based Border Patrol agent told the *Los Angeles Times* that some supervisors tolerate, and even encourage, the punitive beatings of suspects who run away from agents. The agent termed the practice, "Thump 'em if they run."<sup>43</sup> The cases of Margarita Rodríguez, the Nogales beating incident, Manolo Castellanos, Salvador Castillo and Guadalupe Ruiz (see below) are illustrative in this regard. Although possibly inspired by the high level of job frustration, these abuses are perpetuated by the official tolerance they receive by immigration law enforcement officials.

Other abuses, though perhaps related to the high level of job frustration experienced by INS agents, flow more directly from the dehumanization of undocumented immigrants which permeates the INS. In this regard, the remarks of one Border Patrol supervisor to his agents—remarks made in front of a visiting *Los Angeles Times* reporter—are illustrative: "Catch as many tonks as you guys can....Safely. An alien is not worth busting a leg."<sup>44</sup> ("Tonk" is the word used to refer to an undocumented immigrant and refers to the sound of an agent's flashlight striking an immigrant's head.)

The attitude embodied by the supervisor's advice is at the core of the human rights violations documented in this report and elsewhere. While many immigration law enforcement agents treat the people with whom they come into contact humanely and respectfully, far too many believe that the basic human rights of "tonks" and "aliens" are unimportant. This attitude is reinforced regularly as agents elude accountability for abuses they commit while apprehending and detaining suspected undocumented immigrants.

The cases of Hermelindo Sandoval, Jesús Morando, Juan Antonio Velásquez, Antonio Díaz and the unidentified street person battered in detention exemplify the kinds of abuses that occur when an agency institutionally dehumanizes immigrants. The abusive conduct in these cases is characterized by the arrogance and insensitivity of the offending agents, attitudes which should be expected when people are reduced to quasi-human "tonk" status. One should not be surprised that some agents become abusive when they are permitted virtually unlimited authority without fear of reprisal.

**Hermelindo Sandoval Martínez:** On the night of December 22, 1992, Hermelindo Sandoval Martínez states that he was doing a favor for his employer by helping his sister cross the border.<sup>45</sup> After crossing into the United States west of the San Ysidro point of entry, they waited for several hours to leave the border area. At about 3:30 a.m. on December 23, two Border Patrol agents approached Sandoval and the woman he had helped cross the border, Ana María Becerra. One of the agents hit Sandoval in the chest and the back with a flashlight. Sandoval tried to step away from the agent and was then handcuffed and pushed to his knees. The agent stood in front of Sandoval, pushed him backward and kneed him in the chest. Sandoval asked the agent, "why are you hitting me?" and

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<sup>43</sup> McDonnell and Rotella, "When Agents Cross Over."

<sup>44</sup> Rotella and McDonnell, "A Seemingly Futile Job."

<sup>45</sup> The following account is based on a March 21, 1993 interview with Hermelindo Sandoval, an affidavit provided by the doctor who treated Sandoval, phone interviews with Sandoval's attorney and doctor, and press reports.



the agent replied, "I'm in charge here." He then picked up Sandoval and put him on the steep edge of the levee and threatened to push him over.

Sandoval was taken to the rear of the Border Patrol van. Once behind the van, the agent pushed him to his knees and kneed him in the chest again. The agent then stood Sandoval up and hit him in the chest with his flashlight. The agent warned Sandoval that things would get worse for him if he told anyone about the beating. Sandoval, who was unarmed, was then frisked and put in the van. Becerra, who was detained by the second agent, witnessed the beating and told him to stop hitting Sandoval.

Sandoval and Becerra were then taken to the San Ysidro detention center where they were held for several hours. While he was detained, Sandoval requested medical attention, but his request was ignored. He reports that he felt as though something in his stomach might burst and that he cried from the pain.

Sandoval was placed on a bus to return to Tijuana, when the bus driver noticed that he was crying and asked what was wrong. Sandoval told the driver that he had been beaten by the "migra."<sup>46</sup> When they reached the border, the driver told Sandoval and Becerra to stay on the bus. While he stayed on the bus, a succession of three different agents questioned Sandoval about what had happened. When Sandoval stated he had been beaten, the agents asked him what he had done to deserve the beating. He told each agent he needed medical attention and each agent told him to wait.

Sandoval was then returned to the San Ysidro detention center and locked in an individual cell. Sandoval told the agents at the detention center that he could not stand the pain and wanted to be returned to Mexico to get help. His pleas were ignored for another hour until he was taken to Chula Vista Community Hospital. He was placed under observation until, on the 10th day of his hospitalization, tests showed his condition was worsening. He then underwent an operation to repair damage that was done to his pancreas.

The Border Patrol did not respond to Sandoval's allegations until January 5, 1993, when it released a statement disputing Sandoval's account of the incident and claiming that Sandoval had injured himself by falling into a drainage ditch. Sandoval's physician told Americas Watch that his injuries were consistent with his account of the beating. He further stated that while it was conceivable the injuries were caused by a fall, he would have had to have fallen on an object of a particular size to damage his pancreas as it was injured.

The FBI initiated an investigation after reading about the incident in the newspaper.<sup>47</sup> An FBI spokesman told a reporter that the FBI had not received the information that the Border Patrol claimed it had passed to the Bureau.<sup>48</sup> The Office of the Inspector General of the Justice Department also began an investigation. Although the identity of the agent responsible for the assault is known by the OIG and FBI, the agent reportedly is still on active duty. To date, the agent's name has not been disclosed to either Sandoval or his attorney. Sandoval's attorney filed a civil suit against the INS on March 30, 1993.

**Jesús Morando:** On February 20, 1993, Jesús Morando, a resident alien in the United States since 1961, and his wife, Rita Cuen Morando, both approximately 50 years old, were travelling with 16

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<sup>46</sup> "Migra" is a slang term used in the border region to refer to agents of the INS.

<sup>47</sup> Leonel Sánchez, "FBI probes Border Patrol over claims agents beat immigrant, violated rights," *The San Diego Union-Tribune*, January 6, 1993.

<sup>48</sup> *Ibid.*

others in a caravan of three vehicles on their way from Nogales, Sonora, (Mexico) to Laughlin, Nevada.<sup>49</sup> At 6:10 a.m., one of the cars in the caravan was pulled over by the Border Patrol. The two other vehicles in the caravan pulled over as well.

Two Border Patrol agents emerged from their vehicle with their guns drawn. The agents were yelling at Morando to do something, and he thought they wanted him to leave, so he began to pull away. Morando then realized that this was not what the agents wanted and pulled the car back and parked it again. The Border Patrol agent who had been driving approached Morando's car with his gun drawn, yelling obscenities. He struck the hood of Morando's car repeatedly with his gun, making four or five dents. He then hit his gun against the car's fender, and threw it at the headlight, breaking the left signal light.

At this point, Morando's wife began yelling in Spanish for the agent to calm down and told him that they had papers.<sup>50</sup> The agent replied, "You shut up. This isn't your business." Others in the caravan later told the Morandos that they remained silent because they were frightened.

The agent picked up his gun from the ground, and Morando started to get out of his car. The agent then grabbed Morando by his collar, pointed his gun into Morando's upper chest, and dragged Morando by his collar around to the front of the car. When Morando saw the damage that the agent had done to his car, he told the agent he would have to pay for it. The agent, who still had his gun to Morando's chest, asked Morando if he wanted to die in jail. Morando asked, "why would I go to jail?" The agent told Morando that he did not break the car's signal light and that Morando's car was fine. He then released Morando.

A passenger in another car in the caravan approached Morando's car to see what was happening. The agent became angry with the passenger's intervention and put Morando into the Border Patrol vehicle and called for assistance. After the second Border Patrol vehicle arrived, Morando and the rest of the caravan were allowed to leave.

On May 4, 1993, the Morandos filed a claim against the INS, stating that they had suffered several stress-related physical ailments as a result of the encounter and that their civil rights had been violated.

**Margarita Rodríguez, Socorro Rodríguez de Vásquez and Evangelina Alcocer:** On June 30, 1992, Rodríguez and her two-year-old son, Abraham, were walking along the sidewalk adjacent to the Paisano apartment complex in El Paso.<sup>51</sup> Rodríguez's 20-year-old step-daughter, Socorro Vásquez, sat on a nearby bench with her seven-month-old daughter in her arms. Vásquez had just called her sister Evangelina Alcocer from a nearby phone to tell her to meet them at the Paisano apartments.

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<sup>49</sup> This account is based on a March 24, 1993, interview with Jesús Morando and his wife, Rita Cuen Morando and a Claim for Damage, Injury, or Death filed by the Morandos with the INS, May 4, 1993.

<sup>50</sup> All of the individuals in the caravan were lawfully within the United States.

<sup>51</sup> This summary is based on Americas Watch's interview of Ms. Margarita Rodríguez and Socorro Rodríguez de Vásquez on March 26, 1993. Additional sources include statements given by the two women to the Mexican Consulate, numerous newspaper clippings, and a summary of witness statements gathered by the El Paso Border Rights Coalition.

At about 3:00 p.m., Agent Mario Bellamy of the Border Patrol arrived at the Paisano apartment complex.<sup>52</sup> Bellamy was not dressed in uniform (although witnesses recounted that he was wearing a badge). Bellamy asked Vásquez if she had papers. Vásquez, frightened, responded "no." In fact, Vásquez told Americas Watch she had documents authorizing her to cross into the United States. Bellamy handcuffed Vásquez by one hand. A woman bystander suggested that Vásquez give her the baby she was carrying, which she did.

Meanwhile, two-year-old Abraham ran away when Agent Bellamy approached the two women. Rodríguez chased after her small son. Upon seeing Rodríguez run, Bellamy left Vásquez, with one arm in handcuffs, standing in the middle of the street. He caught Rodríguez after she caught up to her son, and struck her with a karate-style chop on the back of her neck. He continued to hit her.

At this point, Evangelina Alcocer arrived in her car. Upon seeing her mother being beaten, Alcocer stopped her car and got out. She ran over to where Bellamy was hitting her mother and wrapped her arms around him in a bear hug, imploring him to let her mother go. "She understands words," Alcocer told him. Bellamy let Rodríguez go and she immediately fled, this time with Abraham on her shoulder. Bellamy then dragged Vásquez, to his vehicle and brusquely pushed her inside, bruising her foot in the process. Bellamy then got in the car, backed up, and began to chase Rodríguez as she headed towards the interior of the apartment complex. Bellamy drove after her for a while, then got out of the car and chased her on foot.

When Bellamy caught up to Rodríguez he began to beat her, knocking her to her knees. By this time, a group of people (mostly women) had assembled, and were watching the beating. Several of them yelled for him to stop, but apparently none intervened. Some of the women who were present went into the complex to get their husbands. When the men arrived on the scene, Bellamy stopped hitting Rodríguez. Nearly nine months after the incident, she told Americas Watch that she still suffers from pain in her upper back that makes it impossible to carry heavy bags.

Bellamy then went to the woman who had been holding Vásquez's baby, asked her what she was doing with the child, and took her from the woman. Bellamy brought the child to Vásquez, then proceeded to Alcocer's car and took the keys out of the ignition. Alcocer approached Bellamy and asked for her car keys. Bellamy threw the keys to the ground and told Alcocer to pick them up. When Alcocer bent over to do so, Bellamy drew his gun and placed it in the back of her neck. When Alcocer stood up, she sprayed Agent Bellamy in the face with mace that was attached to her key chain.

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<sup>52</sup> Before the events of June 30, Bellamy was alleged to have been involved in several incidents of abusive behavior. According to the *El Paso Herald Post*, on March 4, 1992, Bellamy and other Border Patrol agents confronted a group of Mexican citizens outside a bar in Chula Vista, brandishing firearms. See, Julian Resendiz, "Border Patrol agent has record of abuse, Mexico says," *El Paso Herald Post*, February 4, 1993. On July 27, 1991, according to a statement given to the Mexican Consulate in El Paso by María de Lourdes Carranza de Montoya, Agent Bellamy caused injury to Ms. Carranza's back by forcing her to sit on the floor of a van while he drove at high speeds in pursuit of suspected undocumented immigrants. Despite her repeated complaints, Bellamy allegedly continued his reckless driving, telling her afterward she had no right to complain since she was a "wetback." According to another complaint filed with the Mexican Consulate, on July 16, 1990, Agent Bellamy pummelled a Mexican fruit vendor, breaking the man's nose against the side of a vehicle and threatening him at gunpoint. McDonnell and Rotella, "When Agents Cross Over." The U.S. Department of Justice investigated this last complaint, but never disclosed the results of its investigation. (Paul Salopek, "Punishment in Border Patrol: a spotty record," *El Paso Times*, December 6, 1992). "Well-placed sources" told the *El Paso Times* that Agent Bellamy "made headlines" in 1988 when he drew a pistol in a bloody fistfight with another agent. These sources indicated that Bellamy was discharged and then reinstated after that incident. (*Ibid.*)

Shortly thereafter, a number of Border Patrol agents arrived in approximately seven vehicles. The three women were detained by the arriving agents. After being detained and questioned for several hours, Rodríguez and Vásquez were taken to Mexico. Evangelina Alcocer spent the weekend in detention. The following morning, apparently due to the outrage of witnesses at the Paisano complex, authorities of the Mexican Consulate in El Paso retrieved Rodríguez and Vásquez from Ciudad Juárez and took them to render statements about what had occurred.

Subsequently, the FBI investigated the incident and forwarded its report to the Civil Rights Division of the Justice Department, which reviewed the record to determine whether Bellamy had violated Rodríguez's civil rights. In a letter dated December 7, 1992, the Civil Rights Division concluded that it could not take further action because the "matter does not constitute a prosecutable violation of the federal criminal civil rights statutes."<sup>33</sup> The letter, which followed a "careful review" of the FBI report, was addressed to *Mr. Vásquez De Rodríguez* (instead of *Ms. Rodríguez de Vásquez*). In the meantime, Alcocer was prosecuted for assaulting a federal officer. In October, Alcocer pleaded guilty and was fined \$100 and ordered to perform community service. Several sources told Americas Watch that Bellamy continues to serve on active duty with the Border Patrol.

**Juan Antonio Velásquez:** According to Velásquez, he was walking towards the Bridge of the Americas in El Paso at about 10:30 p.m. on February 21, 1992, when two Border Patrol agents stopped him for questioning.<sup>34</sup> Velásquez did not have his "green card" with him, but did have the card number written on a piece of paper. When he gave the piece of paper to one of the agents, they said the number meant nothing and threw it on the ground.

The agents accused Velásquez of being a smuggler and told him to put his hands on the Border Patrol's vehicle, a Suburban van. One of the agents, who later identified himself to Velásquez, kicked Velásquez's legs apart as he leaned against the vehicle and handcuffed him. When the agent instructed him to get into the van, Velásquez refused, stating he was a resident alien. The agent then hit him once on his right side, below the ribs. Velásquez was then taken to the detention center at the bridge.

Although his handcuffs were removed for the drive to the detention center, they were replaced when he arrived. After he had handcuffed Velásquez, the agent punched him again, knocking him backwards to the ground, hurting his arms and causing his wrists to bleed. When Velásquez and the agent entered the detention center, the latter pulled Velásquez's arms high behind him, and pushed his head down, which further exacerbated the injury to his left hand and arm.

Velásquez told Americas Watch that he was questioned at the station by other Border Patrol agents until the arresting agent returned and reported that Velásquez had a "green card" and could be released. Velásquez told one of the agents that he had been mistreated by the arresting agent. He also complained directly to the agent, who replied that he could not do anything about his mistreatment and showed him his name plate and badge.

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<sup>33</sup> Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division and Linda K. Davis, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice to Ms. Margarita Rodríguez and Mr. Socorro Vasquez de Rodriguez, December 7, 1992.

<sup>34</sup> The following account is based on a March 26, 1993 interview with Juan Antonio Velásquez, an interview with Velásquez's attorney, and press reports.



After he was dropped at his house by the arresting agent's partner, Velásquez returned with his wife to the Border Patrol office to complain about his treatment.<sup>55</sup> At the Border Patrol office the couple asked to talk to a sergeant and were forced to wait for an hour and a half, during which time the agents at the station were sarcastic and made fun of them. Velásquez gave the sergeant the arresting agent's name, and the sergeant told him to go to Vista Hills Medical Center. The sergeant said that an investigator would contact Velásquez within three days.

Velásquez went to the medical center the next day and had x-rays taken of his arms and ribs. The examination showed damage to the tendons in his left arm, which required physical therapy for two months.

Mr. and Mrs. Velásquez waited for a month without receiving a call from an investigator before they decided to see a lawyer. In June, the lawyer advised Velásquez to return to the same Border Patrol office at the bridge with a newspaper reporter who was investigating Border Patrol abuses. The reporter waited outside the office and put a wiretap on Velásquez.<sup>56</sup> Velásquez spoke to two supervisors and neither informed him that he could talk directly to the Department of Justice's Office of the Inspector General or to the FBI, even after Velásquez asked one of them if he should report the incident to anyone else. Velásquez was told that an inspector would contact him in two or three days at his house. Velásquez told Americas Watch that no one from the Border Patrol or the INS had contacted him as of March 1993, some nine months after his second visit to the Border Patrol office.

The FBI interviewed Velásquez once, and has reportedly sent its findings to the Civil Rights Division of the Department of Justice. Velásquez's attorney believes that the case is now pending but that Agent accused agent remains on active duty.

Velásquez had worked at a food factory but he alleges that he lost his job due to the injury to his left arm. He is now working at a clothing factory. In August 1992, he filed a civil suit against the Border Patrol, claiming permanent damage to his arm.

The Velásquez case illustrates the arrogance of many Border Patrol agents. Not only did the agent batter Velásquez, but he also showed Velásquez his name plate as he told him that he would not be affected by Velásquez's complaint about mistreatment. Velásquez's futile attempts to report the incident demonstrate the contempt many agents have for persons who want to file complaints. Although he sought to report the incident to three Border Patrol supervisors on two separate occasions, each time the officials either would not accept his complaint or gave him inaccurate information about how to submit a complaint.

**Nogales beating incident:** On May 22, 1992, a young mechanic from Nogales, Sonora (Mexico), crossed the border to Nogales, Arizona to purchase some auto parts.<sup>57</sup> He was riding his bicycle along Grande Avenue, when he was stopped by two Border Patrol agents in an official vehicle. The two

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<sup>55</sup> Velásquez's wife told Americas Watch that she had gone looking for Velásquez after he was arrested and a witness told her he had seen him being beaten and detained by a Border Patrol agent. The man has now volunteered to serve as a witness in any case against the Border Patrol agent.

<sup>56</sup> See, Paul Salopek, "Tapes show flawed complaint process," *El Paso Times*, December 7, 1992.

<sup>57</sup> The following version is based on interviews with Lynn Marcus, Director of the Southwest Refugee Rights Project and Katie McCormick, a second year law student at the University of Arizona School of Law who worked for the Project in the summer of 1992. The man involved requested anonymity through his attorney.

agents shouted at the man to stop and lie on the ground. When he failed to do so, they got out of their car and attacked him, causing a fracture to his right leg.

The man was later taken to the Florence Service Processing Center (a drive of more than two hours). At some point during his processing, his personal belongings were taken from him, including his asthma inhaler. The young mechanic complained to INS authorities at the Florence Center about pain in his leg, and sought the return of his inhaler, but they ignored his requests. He then suffered an asthma attack that resulted in loss of consciousness. At this point, INS authorities took him to a hospital in Florence. He told the physician attending him about the pain in his leg. The physician told him that he thought the leg might be broken, but that x-rays would be necessary to make that determination. Despite the doctor's concern, the INS personnel at the hospital took him back to the Florence Center before x-rays could be taken. The man asked to see the doctor at the Florence Center. After some delay, this doctor, without taking x-rays, told him that his leg was not broken and gave him aspirin and crutches.

Soon thereafter, he was brought before the immigration judge at the Florence Center in the afternoon without having been placed on the deportation calendar. Two immigration workers were present. They stayed for the man's appearance, because they suspected something unusual might have occurred.<sup>58</sup> The man appeared on crutches, at which point the presiding judge jokingly asked whether the INS had been beating him in detention. The man responded no, and indicated that the Border Patrol was responsible. The judge apologized, and allowed the immigration workers to interview him.

The INS returned the man to Mexico. After returning, the man had his leg x-rayed. The x-rays showed that the leg was broken.

**Antonio Díaz:** According to information received by the American Friends Service Committee, on October 9, 1992, Antonio Díaz was straddling the border fence near the San Ysidro Port of Entry when two Border Patrol agents arrived in a van. When Díaz attempted to turn around and climb over the fence back into Mexico, the two agents grabbed his legs, and pulled him off the fence on the U.S. side. As the agents pulled Díaz down, and he held onto the top of the fence, his left middle finger was severed. The severed portion of the finger fell on the ground on the Mexican side of the border.

Díaz was detained for approximately an hour, face down on the ground, while agents told him he should return to Mexico for medical treatment. Díaz insisted that the agents get him medical attention. After an hour delay, the agents took Díaz to a hospital and left him there. The delay in medical treatment reportedly resulted in an infection and severe swelling of his left hand.

**Manolo Castellanos Mora:** Manolo Castellanos Mora and another man, both undocumented Mexican nationals, were heading toward the border in southern Arizona, near Yuma, when they were apparently spotted by Border Patrol personnel who sent a helicopter to fly over them.<sup>59</sup> The chopper

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<sup>58</sup> Katie McCormick told Americas Watch that she suspected something unusual for two reasons. First, she said that the experience of personnel of the Florence Immigration and Refugee Rights Project FIRRP was that the INS sometimes brought individuals before the judge without placing them on the calendar if there was something irregular about the case. Second, at the Florence Center during this time, deportation hearings were held in the morning. Representatives of the FIRRP attended morning sessions in order to aid any detainees seeking assistance, but usually were not present in the afternoon. Their experience was that the INS often scheduled deportees for afternoon hearings (when FIRRP staff were not present) when their situation was irregular. (Telephone interview with Katie McCormick, May 5, 1993).

<sup>59</sup> The following version is based on information provided by the Southwest Refugee Rights Project. The man who accompanied Castellanos requested anonymity through his attorney.

was flying low overhead, shining a bright light on the men. Castellanos and his companion ran under a bridge. A Border Patrol vehicle pulled up and an agent got out of the car.

The agent struck both men with his flashlight. Castellanos alleges that the agent struck him on the head, arms, and body with the flashlight, and then kicked him in the buttocks and the legs once Castellanos had fallen to the ground. He also reports that the agent also struck his friend in the face with his flashlight. The blow caused the man's face to bleed, and Castellanos took off his shirt and gave it to his friend to stop the bleeding. Castellanos' friend required 12 stitches to close the wound caused by the Border Patrol agent's blows.

The version offered by the agent does not differ significantly. The agent claims that the two men were running at him:

The last time I was placed in this position I had my left ear partially severed taking 46 stitches to reattach. Having this in mind I swung my flashlight at the first alien, striking him above the right eye and pushing him down. At the same time using the returning momentum I struck the second alien on the shoulder. The second alien then turned to flee. At that time having dropped my flashlight I struck him with my hand held radio. That failing to stop him, I kicked him behind the knee to put him down. At this point both subjects offered no further resistance...<sup>60</sup>

Afterwards, according to the agent involved, first aid was administered.

Even if the agent's account of this incident is accurate, the practice of battering suspected undocumented immigrants to detain them is unacceptable. The use of radios or flashlights as weapons is an unwarranted use of force against individuals who appear to pose no immediate threat to the agents detaining them.

**Beating of Street Person:** On February 20, 1993, an elderly street person was beaten by immigration agents while he was held at a detention center south of San Diego, a witness told Americas Watch. The incident began when a female immigration agent began using abusive language and yelling at the detainees, instructing them to sit on three benches. There was not enough room for all of the detainees on the benches, and the elderly street person, whom the witness thought might be an alcoholic or mentally ill, stood apart from the others who were trying to sit on the benches. When the female agent saw that the elderly man was not complying, she left the detention cell and returned with two more agents. One of the agents removed his watch and put it on the counter before entering the cell.

One of the agents then asked the street person, in Spanish, "What's wrong with you that you don't do what we say?" The street person replied that he could not fit on the bench. One of the agents told him that he was asking for trouble and asked if he wanted a fight. The street person then sat on the floor of the cell and put his head down. The agent told him that he should get up or the agent would get him up. The street person did not respond. One of the agents then grabbed his clothes, punched and kicked him, and threw him on the ground. He was then handcuffed and dragged on the floor by two of the agents while the other agent hit him. When the other detainees attempted to help the street person, the agents warned them that they should not get involved or they would get the same treatment.

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<sup>60</sup> This information comes from the I-213 (Record of Deportable Alien) form filed by the agent involved in the incident.

**Salvador Castillo:** On March 7, 1993, Salvador Castillo, a 24-year-old Salvadoran, was detained and beaten by a Border Patrol agent in Balboa Park in San Diego, California.<sup>61</sup> Castillo, who was so badly beaten that he could not walk and had to be placed in the Border Patrol van by the arresting agents, told Americas Watch that he believes he was beaten because he made the agents chase him.

According to Castillo, an undocumented immigrant, he was at Balboa Park when two Border Patrol vehicles arrived. One agent got out of the van and pursued him when he fled on foot. When the agents apprehended him, one pulled Castillo's arms behind him and another agent pushed Castillo's body over the front of a Border Patrol vehicle, forcing his face onto the car's hot hood. Castillo asked the agent to release his face from the hood because it was burning him; the agent told him to "shut up." The agent then put Castillo face-down on the ground, handcuffed him, pulled his handcuffed arms up and kned him in the back of his knee, banging his knee against the ground. At this point he yelled at Castillo, saying, "Don't look at me!"

When other agents arrived, the agent who was beating Castillo explained that Castillo was Mexican and that he had made the agent run. When the agents tried to take Castillo to their van, his injured leg prevented him from walking. The agents took Castillo to the San Ysidro detention center. He did not complain about the beating or his injury because, he told Americas Watch, "no one complains, that's just what happens." During a random interview at a Tijuana shelter, he showed Americas Watch a scar near his left eye and a bandaged knee, both of which he alleges are results of the injuries received during the incident.

**Guadalupe Ruiz:** Guadalupe Ruiz told Americas Watch that on April 4, 1993, he and another man were walking towards an immigration checkpoint in San Clemente, California, trying to avoid Border Patrol agents when an agent grabbed him and threw him to the ground.<sup>62</sup> The agent struck Ruiz on the head and handcuffed him. The agent then picked Ruiz up by the hair and dragged him to a tree. Throwing him against the tree, the agent began asking him what [contraband] he had. Ruiz responded that he had nothing. The agent then struck Ruiz on the back and in the groin.

Ruiz told Americas Watch that he was taken to a vehicle and turned over to another agent. This agent also grabbed him by the hair and threw him in the Border Patrol vehicle. Ruiz was given a form to sign, which indicated that he had the right to an attorney. When Ruiz asked about this right, the agents told him that they did not have time for that. Ruiz signed the form and was taken to the border and returned to Mexico.

## B. Other Reported Incidents of Abusive Treatment by Immigration Enforcement Authorities

**Cases from the Human Rights and Citizen Protection Ombudsman, Tijuana, B.C., Mexico:** The Office of Human Rights and Citizen Protection (OHRCP), a governmental monitoring group, receives, investigates and documents allegations of human rights abuse committed on both sides of the U.S.-Mexico border. The following abuses were alleged by the complainants and documented by the OHRCP to have been committed by U.S. immigration authorities.

- **Andrés Aguirre Benítez:** a 24-year-old laborer and Tijuana resident from Mazatlán reported that he was arrested in Imperial Beach, California on March 29, 1992, at about 11:00 p.m., by two

<sup>61</sup> The following account is based on a March 21, 1993 interview with Salvador Castillo.

<sup>62</sup> This information is based on two telephone interviews with Guadalupe Ruiz on April 7 and April 8, 1993.



immigration officials. The officials took him to their offices, where they asked him to sign a voluntary departure form. When Aguirre Benítez asked to see a copy of the form, one agent became enraged, lifted him by his collar, and threw him into a holding cell, causing him to hit his head and lose consciousness. A medical examination performed the following day indicated that he suffered from two hematomas of approximately two centimeters in diameter in the back of the skull.

- **René Andrade Arcota:** Andrade, a 30-year-old solderer from Guadalajara, Jalisco, was crossing the border at the point known as "El Bordo" on June 23, 1992 at about 2:00 a.m. when he was stopped and placed inside a Border Patrol vehicle. When the agents stopped to detain other suspected undocumented immigrants, Andrade fled on foot. Border Patrol agents followed him and eventually caught him a second time.

When the agents caught Andrade, the agent from the passenger seat threw him against the right side of the vehicle. The agent then forced him to open his arms and legs and beat Andrade with his nightstick on the head. The agent who had been driving also beat Andrade. When the agents stopped beating Andrade, they realized that they had opened five wounds on his head. At about 2:30 a.m., the agents took Andrade to a private home where his wounds were treated. Andrade believed that it was a home, and not a clinic, because of the furniture inside and the fact that the woman who took care of him wore a bathrobe. The woman in the bathrobe who received Andrade when he arrived attended to his injuries competently: she anesthetized his wounds and then sutured them. After being treated, Andrade was taken to the border and turned over to the Grupo Beta, the Mexican police agency responsible for patrolling the border strip in the Tijuana area. Andrade was treated by a Mexican doctor on June 26 for the injuries caused by his beating.

- **Roberto Dueñas Guerrero:** On January 7, 1992, Dueñas, a 37-year-old mechanic, was crossing the border with a paid guide when he was intercepted by four Border Patrol agents at the Tijuana border crossing. One of the agents, a tall well-built Latino, grabbed Dueñas by the shoulders and kicked him with the point of his cowboy boots, breaking a rib. The agent then pushed Dueñas' head into dirty water, forcing him to drink it, and called him "Mexican dog" and "pig." Dueñas filed a complaint with the Grupo Beta and the Ministry of Foreign Affairs of Mexico.

**Casa Scalabrini shelter, Tijuana, Baja California, Mexico:** The Casa Scalabrini is a shelter affiliated with the Catholic Church that provides shelter for immigrants in transit in Tijuana. The shelter provides temporary lodging to adults, many of whom have either recently returned from the United States or who intend to cross the border. When shelter staff receive guests, they inquire whether they were mistreated during their migration. Incidents of abuse by authorities (from Mexico, the United States or elsewhere) and private citizens are noted in summary form. Below are the statements of several individuals who claim to have been the subject of abuse by immigration authorities.<sup>63</sup>

- **Manuel,** a 27-year-old technical worker reported that on January 3, 1993, at about 10:00 a.m., he was fixing an automobile in Salt Lake City, Utah, when two people who appeared to be from the Border Patrol arrived. They beat him and forced him into a patrol car, taking and destroying his travel documents. The agents beat him and stole approximately \$330 dollars from him before returning him to Mexico. Manuel identified the two agents by name in his statement.
- **Oscar Antonio,** an 18-year-old peasant from Honduras reported that he was crossing the border with a 17-year-old pregnant woman at about 1:00 a.m. on November 30, 1992, when a Border Patrol agent hit him and threw the young woman to the ground. Oscar Antonio began to run, but fell to

<sup>63</sup> The full names of these complainants are not included, since we were not able to contact them to determine whether they desired confidentiality.

the ground and passed out when an agent struck him on the neck from behind. When he regained consciousness, Oscar Antonio tried to cross over the fence to Tijuana, but the agent threw him against the fence, causing him to strike his right cheek. Afterwards, he was returned to Tijuana.

### C. Customs Services Abuses at Points of Entry

**Rafaela Rivera:** At about 5 a.m. on February 8, 1992, Customs agents at the Paso del Norte Bridge check point stopped Rafaela and Raymundo Rivera as they returned home to El Paso from Juárez.<sup>64</sup> A Customs agent approached their car and asked Rafaela Rivera, who was driving, to open the trunk for inspection. When the agent began hammering inside the trunk, Rivera asked what he was doing; he replied that he was doing his job. Another agent approached Rivera's car and told her to move to where he was standing. When Rivera looked back to see what the agent inspecting her trunk was doing, the second agent grabbed her left arm and twisted it behind her back. He then pushed her forward onto her car. Rivera complained that he was hurting her. The agent holding her then walked her toward a checkpoint booth with her arm still twisted behind her back. She was screaming for the agent to let her arm loose and kicking backwards to get the agent off her. Her husband, who was now detained by the other agents, was also yelling for the agent to let her go.

One of the other agents told Rivera to calm down, but she replied that he was hurting her arm and she could not calm down until he let her go. One of the agents then told the agent detaining Rivera to calm down. The agent then released her arm.

Rivera called the El Paso police twice before they arrived at the scene to investigate the incident. Before they arrived, a Customs supervisor asked her what had happened. She told him and he apologized for the actions of the agents but did not advise her that she could make a complaint.

An ambulance arrived and took her to the hospital, where a cast was placed on her severely sprained arm. At the hospital, the police questioned her and told her she could talk to an attorney.

An investigator with the Office of Internal Affairs of the Customs Service arrived at the scene after Rivera had been taken to the hospital. He took the statements of the Customs agents, but never contacted Rivera, even though her address and telephone number were listed on the police report.

A few days later, Rivera returned to the bridge checkpoint where the encounter had occurred to find out whether the agent who assaulted her had been disciplined. She was told that he had been suspended. Customs officials later stated that she had been misinformed and that the agent was still on active duty.<sup>65</sup>

The Civil Rights Division of the Department of Justice reviewed the findings of the FBI, which investigated the case, but declined to prosecute.

**Francisco Jayme:**<sup>66</sup> Jayme, a 32-year-old used car dealer in El Paso, Texas, told Americas Watch that on January 16, 1993, he drove a car he had recently purchased in Ciudad Juárez, Chihuahua

<sup>64</sup> This account is based on a March 25, 1993, interview with Rafaela Rivera and press articles.

<sup>65</sup> Denise Bezick, "Woman alleges customs abuse," *El Paso Times*, February 12, 1992.

<sup>66</sup> This information is based on an Americas Watch interview with Francisco Jayme, and a statement given to the Border Rights Coalition of El Paso on March 22, 1993.

(Mexico), across the Bridge of the Americas to El Paso. A Customs agent checked the license plate on the car and found that it did not match the vehicle. Jayme explained to the agents that he had recently purchased the car and was unaware of the problem. As a result, the agent sent Jayme to the inspection center. Once there, Jayme was told that Customs officials would need to check whether the car was stolen. In the meantime, Jayme was detained inside while his name was run through Customs' computer files.

Three Customs agents told Jayme to go to a holding cell. They made him empty his pockets and stand against the wall with his hands up. No matter where he held his hands, one officer told him that he wasn't doing it right. This continued for a while, and Jayme became nervous. He told Americas Watch that he was afraid that he was being "set up," and that the agent would say that he tried to attack them with his hands. Jayme suggested that the agents handcuff him to eliminate any problem with his hands. The agent instead placed Jayme's hands behind his back, locking his fingers together.

The agent then patted Jayme down and found nothing. He made Jayme take off his shoes. The agent then pushed Jayme against the wall, and ordered him to take off his clothes so that he could be strip searched.

Jayme questioned the order, and asked to see an attorney. The agent refused, stating that because he was not under arrest, Jayme had no right to an attorney. He also told Jayme that if he did not undress, the agent would bring in seven other agents to undress him. Jayme stripped to his underwear. The agent directing the strip search told Jayme he also had to take off his underwear. Jayme eventually agreed. When he did so, he noticed that the agents were amused. They made him bend over and squat down. They told him he had to bend over so that they could see what was between his legs. Jayme told Americas Watch that he felt humiliated, not so much by the process itself, but by the fact that the agents enjoyed his discomfort and found it entertaining. After having him bend over naked, the agents allowed him to dress and walked away laughing.

Jayme was left alone in the cell for about an hour. Afterwards, he was given a citation for false registration by an El Paso police officer who had been waiting outside for him. Jayme started to leave, but decided that he should report the rough treatment and unjustified strip search to someone at the Customs office. He walked back inside and attempted to complain. Shortly after 4:00 pm, Jayme spoke with a supervisor (whom he identified to Americas Watch) who told him that the shift had changed, and that he could not accept a complaint. Instead, he directed Jayme to the Customs office on Viscount Street but did not tell Jayme who to talk with nor did he provide him with the address or phone number of the Viscount Street facility. A few days later, Jayme returned to the same location and spoke with another supervisor. This supervisor could not help Jayme identify the agent responsible and, according to Jayme, spent about 15 minutes trying to dissuade him from lodging a complaint.

Although Customs agents are permitted under the U.S. Constitution to search persons entering the country without particularized cause, federal courts agree that a more rigorous standard applies when an agent seeks to perform a strip search.<sup>67</sup> Although federal appellate courts differ as to the precise standard to be employed, they agree that when a border search goes beyond a routine inspection, some level of suspicion must exist for the search to comply with the Fourth Amendment to the U.S.

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<sup>67</sup> The U.S. Supreme Court in *U.S. v. Montoya de Hernandez*, 473, U.S. 531, 541 n.4 (1985) expressly left undecided what level of cause was required to perform a non-routine search on a person entering the United States. See, William E. Ringel, *Searches & Seizures, Arrests and Confessions*, (Clark, Boardman, Callaghan, Deerfield, IL, 1993), §15.2(b)(2).

Constitution which prohibits unreasonable searches and seizures.<sup>68</sup> Federal courts have thus required that a Customs agent must have either "real"<sup>69</sup> or "reasonable"<sup>70</sup> suspicion before she may conduct a strip search.

According to Jayme's account, the Customs agents who detained him had no such "real" or "reasonable" suspicion that would have warranted a strip search of his person. Instead it appears that the agents sought to humiliate and intimidate Jayme.

**Agustín Corona:** On November 8, 1992, at 2:00 p.m., Agustín Corona, a Mexican national who lives in Tijuana but lawfully works in the United States, was stopped at the San Ysidro checkpoint by Customs officials after drug-detection dogs reacted excitedly to the scent of his car.<sup>71</sup> He was pushed toward the Customs office, told that they suspected him of transporting drugs, and warned that anything he said could be used as evidence against him. In the office, he was strip searched twice but no drugs were found. Agents then pressured him to sign an x-ray consent form, which he did. He was handcuffed and taken to a hospital where he was examined by a doctor and his stomach was x-rayed. No drugs were found. Around 7:00 p.m., he was brought back to the checkpoint, his car was returned, and he was permitted to cross the border. (Corona believes the dogs reacted to the smell of stale beef tacos that were in a bag in the back seat of his car.)

#### D. Overzealous Enforcement and Abuse of Authority: Violations on High School Campuses

**Bowie High School:** Recently, a federal court ruled that Border Patrol agents committed a number of abuses over a period of years against students and faculty at Bowie High School in El Paso, Texas including the use of excessive force (beatings, rough physical treatment, and the unnecessary brandishing of a weapon), verbal abuse, and harassment. The ruling marked the culmination of efforts to counter abuses by Border Patrol agents on the Bowie campus.

Bowie is a sprawling 2,200 student public high school in El Paso. Because of its proximity to the border, the high school's campus has been the object of extensive Border Patrol vigilance. Until recently, Border Patrol agents freely entered the school grounds to pursue individuals suspected of

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<sup>68</sup> *Ibid.*

<sup>69</sup> See, *U.S. v. DesJardins*, 747 F.2d 499 (9th Cir. 1984), *modified on other grounds*, 7722 F.2d 578 (9th Cir. 1985) (requiring "real suspicion."); *U.S. v. Flaherty*, 692 F.2d 1258 (9th Cir. 1982) (same).

<sup>70</sup> See, *U.S. v. Asbury*, 586 F.2d 973 (2d Cir. 1978) (requiring "reasonable suspicion"); *U.S. v. Smith*, 557 F.2d 1206 (5th Cir. 1977), *cert. denied*, 434 U.S. 1073 (1978) (same).

<sup>71</sup> This account is based on Corona's testimony before the U.S. Civil Rights Commission on April 16, 1993 and a subsequent interview with Americas Watch.



crossing into the United States illegally.<sup>72</sup> In so doing, Border Patrol agents abused Bowie High School students, staff, and faculty.

Eventually, seven representative plaintiffs brought a class action suit on behalf of the Bowie community in federal court alleging that their constitutional rights had been denied. The petitioners sought an injunction restraining the Border Patrol from entering campus grounds to detain individuals without some reasonable basis to suspect that they were violating U.S. immigration law. Faculty, staff and students affiliated with the high school came forward to submit affidavits or testify before U.S. District Court Judge Lucius Bunton about previously undocumented abuses.

In December 1992, Judge Bunton ruled that the Border Patrol had violated the civil rights of the plaintiffs and enjoined the agency from doing so in the future. Additionally, Judge Bunton ordered the INS not to stop individuals unless there was a reasonable suspicion, based on articulable facts other than mere Hispanic appearance, that they were violating U.S. immigration laws.<sup>73</sup> Among the cases of Border Patrol abuse noted in the court's ruling were the following:

- **Ben Murillo:** Bowie High School football coach Ben Murillo told Americas Watch that on November 9, 1991, he left the Bowie High School parking lot with two students to drive to a football game against another local high school. A few blocks from the school, a Border Patrol vehicle signaled him to pull over, which Murillo did. When he stopped and looked behind him, Murillo saw a Border Patrol agent pointing a gun just inches from his head. Murillo identified himself as a football coach at Bowie High School and told the agent, "I'd appreciate it if you would holster your gun." The agent responded "I'd appreciate it if you would shut your mouth and get out [of the car]." The agent holstered his gun and questioned Murillo.

In addition to the two students in Murillo's car, the incident was also witnessed by two other football coaches who pulled over to see why Murillo had been stopped. The Border Patrol agents interrogated the two students in the car and then let the three leave.

Although Murillo took no action at the time, several months later he had the opportunity to complain directly to the Border Patrol Chief for the El Paso sector, Dale Musegades. Musegades

<sup>72</sup> Rather than position themselves on the south side of the Bowie campus in the strip that separates the high school from Mexico, Border Patrol agents routinely station themselves on the north side of the school. As a result, they routinely entered Bowie's campus in order to detain individuals suspected of crossing illegally. Mark Schneider, an El Paso attorney noted that agents "patrol the Bowie area on the north side of campus—not the south—so that those trying to cross can't see them." [Tina Plaza, "Let's See Some Papers: In El Paso, Looking Latin Is a Crime," *The Progressive*, April 1993, p. 23.] Additionally, "laying back" rather than maintaining a physical presence on the border allows the Border Patrol to detain more immigrants. Americas Watch spoke with several former and current Border Patrol agents who confirmed that this technique is commonly practiced to enhance the agency's arrest figures. As one former Border Patrol agent told Americas Watch, referring to the agency's quota system for evaluating performance, "it's a big numbers game."

<sup>73</sup> *Murillo v. Musegades*, EP-CA-319-B, (W.D. Tex. Dec. 1, 1992) (slip. op.) (Granting plaintiffs' petition for preliminary injunction and class certification) [hereinafter *Murillo*]. The court enjoined the INS:

- (1) from stopping and questioning an individual as to his or her right to be or remain in the United States
- (2) unless the Agent has a reasonable suspicion, based on specific articulable facts involving more than the mere appearance of the individual being of Hispanic descent,
- (3) that the individual is either illegally in the United States or is guilty of committing an offense against the Immigration Laws of the United States for which the INS has jurisdiction.

*Ibid.*, p.2.

told Murillo that if the story was true, what happened was inappropriate, and that he would look into it. Murillo never heard from Musegades.

- **Nieden Susie Díaz:** According to Judge Bunton's findings of fact, Nieden Susie Díaz was approached by El Paso Border Patrol agents as she walked home from school, years before the lawsuit was filed. One of the agents demanded to know her citizenship and questioned her. Nieden Susie Díaz answered all of his questions in English. The agent, for no apparent reason, knocked Díaz down to the ground and kicked her about twenty times, causing her physical pain, and bruises.<sup>74</sup>
- **David Rentería:**<sup>75</sup> On June 3, 1992, Rentería and Juan Carlos Jáquez, two students at Bowie, were walking home from the school when a Border Patrol vehicle pulled up along side them. One agent asked them about their citizenship; both responded that they were U.S. citizens. The agents asked a few other questions which the two young men answered. Rentería answered as he walked. One agent told Rentería, "You better stop [walking] or I'll beat you so bad you won't be able to walk." The agent then asked Rentería for identification and pushed him up against a fence. Rentería responded that he didn't carry identification; that he was invoking his right to remain silent; and that the agent should stop pushing him. The agent responded that Rentería had no right to remain silent because he was not under arrest. In the course of this exchange, the agent pushed Rentería face first against the fence, slapped his back, kicked his legs out to frisk him, and slapped him with one hand while he held Rentería's arm behind his back with the other. The agent called a police officer to the scene, who later told Rentería that there was nothing that could be done about his complaint of physical mistreatment.

About two days later, Rentería (who is visually impaired) was in front of his house with his brother when a Border Patrol vehicle passed by. According to Rentería's brother, the agent in the passenger seat, the same one that had battered Rentería two days earlier, gave Rentería the finger. As he drove off, the agent spat out the window and laughed sarcastically, according to Rentería's brother.

On March 28, 1993, Rentería and Jáquez were once again stopped by Border Patrol agents, apparently without cause, and in apparent violation of the court's temporary injunction. The two young men were waiting at a bus stop when they were stopped by agents who threatened to lock them up when they refused to answer questions. They indicated to an El Paso newspaper that the agents called the men obscene names and angrily derided Bowie High School's principal and those involved in the *Murillo v. Musegades* lawsuit.<sup>76</sup>

- **Mario Tapia:** In the summer of 1991, Mario Tapia and a friend witnessed an El Paso Border Patrol agent stop an unidentified man and beat the man with a baton. When Tapia and his friend tried to

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<sup>74</sup> Murillo, p. 10.

<sup>75</sup> This information is based on the judicial order in *Murillo*, as well as a personal interview of Ben Murillo and David Rentería. Other sources include Roger Tomsho, "Matter of Principle: High School in El Paso Gives the Border Patrol A Civil Rights Lesson," *Wall Street Journal*, February 23, 1993; and Louis Dubose, "Suing the Border Patrol: The Battle at Bowie High," *The Texas Observer*, December 11, 1992.

<sup>76</sup> Leon Lynn, "Plaintiffs say agents still harass: Ex-Bowie students tell of bus-stop incident," *El Paso Herald Post*, March 29, 1993.

help the man, they were beaten by the agents. The agents struck Tapia at least four times, once in the face, once in the head, and twice near his stomach.<sup>77</sup>

- **Other Abuses:** Several other students suffered abuses including unwarranted arrests, detention and processing at INS facilities for hours despite their legal status in the United States.<sup>78</sup> The court found the claims of physical mistreatment and verbal abuse of other plaintiffs to be meritorious. It wrote, "Representative Plaintiffs, all United States citizens, have been insulted, humiliated, degraded, and embarrassed each time they were either stopped, questioned, detained, frisked, arrested, searched, and physically and verbally abused by Defendants."<sup>79</sup>

**Carl Hayden Community High School:**<sup>80</sup> On March 15, 1993, three students were walking to the high school campus in Phoenix, Arizona from a popular restaurant when they were approached by a plainclothes Border Patrol agent. When the agent yelled to the students to "come here," the students ran onto the campus. The agent chased the students and tackled one of them. According to witnesses, the agent placed his knee into the student's back and held his arm behind his back while he held him face down in a grassy area between two classroom buildings. Witnesses also stated that the agent repeatedly forced the youth's face into the grass. The youth, who was in the country legally, was handcuffed but was not arrested due to the intervention of school officials.

The incident was the latest in a series of Border Patrol incursions onto the campus during which school records were inspected by agents or students were harassed and questioned about their immigration status. Prior to this latest incident, the Border Patrol and school officials had agreed to memoranda of understanding which school officials believed would preclude the inhumane treatment of students. The Border Patrol stated that they had only agreed not to carry out "routine enforcement operations" on school grounds, but had never agreed not to enter the campus.

According to the office of Representative Ed Pastor (D-AZ), this was the 12th time in 13 months that the Border Patrol had attempted to make an arrest on school campuses in west or south Phoenix. In reaction to this incident, Representative Pastor stated, "They are going beyond what I think are reasonable limits in enforcing immigration laws.... The Border Patrol should change its attitude."<sup>81</sup>

## E. Other Abuses

### 1. Firing of warning shots

Even though INS firearms policy forbids the firing of warning shots by INS personnel, including the Border Patrol, immigration law enforcement agents in the field routinely ignore the prohibition. As noted in Section II, INS policy states:

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<sup>77</sup> Murillo, p. 12.

<sup>78</sup> *Ibid.*, pp. 6-7 (describing the detention of Héctor Ortiz, María Flores, and two others).

<sup>79</sup> *Ibid.*, p. 14.

<sup>80</sup> This account is based on telephone interviews with Kino Flores, Principal of Carl Hayden Community High School and community activists, as well as press articles.

<sup>81</sup> Press statement of Representative Ed Pastor (D-AZ), March 15, 1993.

Firing a firearm should be done only with the intent of rendering the person at whom the firearm is discharged incapable of continuing the activity that caused the officer to shoot. Therefore, the firing of warning shots is prohibited.<sup>82</sup>

Despite these regulations, during two recent trials of agents of the Border Patrol, other agents testified that warning shots are fired regularly. For example, in testimony at the trial of former Arizona Border Patrol agent Gary Patrick Callahan, Agent Glenn C. Waltz testified, "It's against Border Patrol policy, but everyone at the station...would fire your gun up in the air. And [smugglers] would drop their loads and run off."<sup>83</sup>

Testimony during the December 1992 murder trial of Border Patrol Agent Michael Elmer in Tucson, dramatically illustrated Border Patrol agents' total disregard of the prohibition on warning shots. (*See*, Section II.A.) Agent after agent testified that warning shots are fired nightly in the remote canyons along the border with Mexico.

Border Patrol Agent Frank Arellano, for instance, testified that he was not concerned by shots he heard nearby during a March 1992 incident:

Well, it is like—along the border and stuff like that you hear shots every night, so I don't know if I would say I was alarmed. Like I said, I didn't hear any radio traffic, so, no, I guess I wasn't alarmed....<sup>84</sup>

Agent Salvador García testified during the same trial that, "On any given night, anywhere along the border, you can hear shots being fired."<sup>85</sup>

The use of warning shots by Border Patrol agents is well-known even outside the agency, yet as of December 1992, Border Patrol supervisors had not taken steps to curtail this dangerous practice. For example, during the Elmer trial, the wife of Thomas Watson, Agent Elmer's partner, testified that her husband had told her that "he did fire warning shots, and it is something that I had heard anyway, it was common practice."<sup>86</sup> She went on to testify that she knew that warning shots were against policy, and added: "It is a very common practice, but it is not a policy, no."<sup>87</sup> Nonetheless, at a U.S. Civil Rights Commission hearing in April 1993, Border Patrol Chief Ronald Dowdy, the senior Border Patrol official in the Tucson area, testified that supervisors were unaware of the routine use of warning shots by agents before the Elmer trial. He stated that he was now looking into the matter.<sup>88</sup>

<sup>82</sup> INS Administrative Manual Section 4210, p. 5.

<sup>83</sup> McDonnell and Rotella, "When Agents Cross Over." Agent Callahan was convicted on cocaine trafficking charges.

<sup>84</sup> *Elmer* transcripts, December 3, 1992 (testimony of Frank Arellano), p. 15.

<sup>85</sup> *Ibid.*, December 10, 1992, (testimony of Salvador García), p. 33. That García was not frightened by the widespread firing of shots suggests that he believed these were not fired at Border Patrol agents, but more likely by them.

<sup>86</sup> *Ibid.*, December 8, 1992, (testimony of Loreta Diane Watson) p. 70.

<sup>87</sup> *Ibid.*, p. 87.

<sup>88</sup> Testimony of Ronald Dowdy before the U.S. Commission on Civil Rights Commission, April 16, 1993.



Warning shots appear to be an integral part of "drug interdiction operations," which, as was revealed during the Elmer trial, can be both comical and dangerous. Border Patrol agents testified that "they don't train us at all in drug interdiction."<sup>89</sup> Watson testified that the preferred method of interdiction is to sneak up on "mules" or drug couriers, yell at them, jump up and down and fire into the air or at the mules. The desired result is for the mules to drop their "loads," or the drugs that they are allegedly transporting into the United States, and then run back into Mexico.<sup>90</sup>

An Arizona Army National Guard communications specialist who was working with Agent Elmer during a March 18, 1992, drug interdiction operation testified:

I do remember Mike Elmer saying that they were shooting between their legs and at their feet to get them to drop whatever they were carrying and they would run.<sup>91</sup>

## 2. Failure to Report Weapons Discharges

As noted in Section II.A., agents do not follow firearms reporting guidelines, which state:

Any employee who discharges a firearm, or is involved in or observes a reportable shooting incident, shall verbally notify the first-line supervisor as soon as time and circumstances permit, but before the officer goes off duty.... Employees who discharge a firearm, or are involved in a shooting incident, shall be required to provide a written report of the incident within sixteen (16) hours of the incident. Any other employee who observes a shooting incident, but does not discharge a firearm or is not directly involved in a shooting incident, shall be required to provide a written report of the incident before the termination of the shift.<sup>92</sup>

Testimony showed that even though several agents witnessed or became aware of two serious shooting incidents near Nogales, Arizona—the March 18, 1992 firing on a group of 30 undocumented immigrants and the June 12, 1992 shooting at three men—only one agent came forward to report that shots had been fired. Further, agents testified that they were aware that it was INS policy to report any shootings during their shifts, yet stated that shootings are so commonplace that no one bothers to report them. One agent stated that, "if you report that [shots were fired] you will be in the office every day for at least two hours or three hours. Like I said, you hear shots every night."<sup>93</sup>

At the Elmer trial, Agent Watson also testified that, when Border Patrol agents check in their weapons at the end of their shifts, the ammunition clips usually are not checked. Agent Watson went on to testify that "everyone at the station always had a couple of extra rounds" so they could replace any bullets fired while on duty without having to report that shots were fired. Watson went on to testify

<sup>89</sup> Elmer transcripts, December 9, 1992, (testimony of Thomas Watson), p. 86.

<sup>90</sup> As Border Patrol agent Thomas Watson testified:

Well, we [Agent Elmer and Agent Watson] have talked about firing warning shots. It is the easiest way to do it and the safest way of jumping a load.... It is easier and it is kind of the way we did down there, is jump up and yell Border Patrol and shoot up in the air, shoot up in the air, and they drop the bundles and run.

Elmer transcripts, December 9, 1992, (testimony of Thomas Watson), p. 21.

<sup>91</sup> Elmer transcripts, December 3, 1992, (testimony of Andrew Priesner), p. 17.

<sup>92</sup> INS Administrative Manual Section 4210, pp. 9-10.

<sup>93</sup> Elmer transcripts, December 3, 1992, (testimony of Frank Arellano) p. 25.

that, "...you keep them [extra bullets] in your lockers [sic] so you can fill them up in case you shoot at a rabbit or warning shots."<sup>94</sup>

### 3. Immediate Deportation

Americas Watch has received reports that immigration law enforcement officials have deported non-citizen minors without allowing them to notify their parents (as in one case described below) or without allowing them to complete medical treatment or collect their belongings (as in the second case described below). The insensitivity displayed in these cases is symptomatic of the disdain with which INS agents often treat detainees.

**Teenagers deported without parental notification:** In November 1992, two teenagers were arrested by the INS at their high school in Omaha, Nebraska, and subsequently deported to Mexico.<sup>95</sup> According to reports, the parents of the two youths were not notified by the INS that their children had been deported.

The two teenagers—Ambrosio López, age 17, and Augustín Antuñez, age 15—were in class at Omaha's South High School on November 6, 1992, when they were summoned to the principal's office. INS agents, who had presented an arrest warrant for the two teenagers, took custody of the youths without calling their parents. The father of one of the youths only learned of the deportation when his son called him from Nogales. The mother of the other youth heard about her son's arrest from friends a day after it took place.

López and Antuñez were detained by the INS for three days before they were taken across the border to Nogales, and left there without food, extra clothes, or money. The father of one of the youths complained that his son, "was sick with gastritis, with no money, no relatives, and in a strange town."<sup>96</sup>

Following an outcry from the community and elected officials, the youths were returned to their parents, seven weeks after their arrest. Although the parents of the two teenagers have gained legal residence in the United States, the youths have been denied residency and can still be deported.

**Federico Pérez Cruz:** Pérez, a 25-year-old Mexican citizen from Cuernavaca, Mexico, told Americas Watch that in late October 1992, he was sleeping in his hospital bed in Las Vegas, Nevada, recuperating from a leg injury, when a female Border Patrol agent entered his hospital room and told him that he was being deported immediately.<sup>97</sup> He was not allowed to pack his belongings. When he was removed from the hospital, Pérez had a metal pin in his leg to help it heal. He told Americas Watch that he did not know if the pin should remain in his leg. When the agents placed him in the Border Patrol van, Pérez reports that the agents mishandled his injured leg, thus causing him severe pain.

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<sup>94</sup> *Ibid.*, December 9, 1992. (testimony of Thomas Watson), p. 61.

<sup>95</sup> Bruce E. Johansen, "Kidnapped by 'La Migra,'" *The Progressive*, April 1993, p. 21.

<sup>96</sup> *Ibid.*

<sup>97</sup> This account is based on a March 20 interview with Federico Pérez Cruz in Tijuana, Baja California, Mexico.

#### IV. FAILURE OF THE EXISTING COMPLAINT AND REVIEW PROCEDURES

Americas Watch believes that the procedures currently in place for the receipt and investigation of complaints of alleged abuses by INS and Customs Agents are inadequate. These procedures, as well as obstructive actions of agents guarantee that complaints are underreported. In the case of the INS, even if a complaint is filed, the investigations mechanisms utilized are plagued by overlapping jurisdiction and broad gaps that result in inadequate investigations and ultimately impunity for abusive agents. Both systems are further undermined by near total secrecy and, in the case of the INS, excessive discretion in the disciplinary process that fosters cronyism in the application of sanctions. Each of these factors is considered below.

##### A. Ignorance and Fear Lead to Underreporting of Abuse

Ignorance about the proper procedures for filing a complaint alleging abuse is widespread throughout the border region. According to a recent study of the relationship between the community and immigration law enforcement authorities in the lower Rio Grande Valley, "the greatest obstacle to filing complaints about alleged mistreatment is the absence of information about the existence of [a] complaint procedure."<sup>98</sup>

The Rio Grande Valley study, directed by Robert Koulisch of the University of Wisconsin, polled residents of the lower Rio Grande Valley on their attitudes and interactions with immigration law enforcement authorities in the region.<sup>99</sup> Of 250 respondents, Koulisch found that only 32, or 12.8%, believed that it was even possible to file a complaint. Koulisch also found that of the 72 people who actually suffered abuses, only 12 victims registered any sort of complaint:

One example of this phenomenon was provided by 30-year-old Ramón Rivera, a Ciudad Juárez resident who told Americas Watch how he had been beaten badly by Border Patrol agents four years earlier while in a detention facility. Rivera only decided to report the beating after seeing a Mexican television program which gave viewers information about how to report cases of abuse in the El Paso-Juárez area to local advocacy groups. Before that, he had no idea as to how or where he could report such incidents.

Rivera's experience was typical of many victims with whom we spoke throughout the border region. In fact, after dozens of interviews with victims, witnesses, human rights investigators, attorneys, and immigration law enforcement authorities, Americas Watch was not informed of a single case in which a victim was assisted by immigration law enforcement agents when attempting to file an abuse complaint.

Fear of being deported and embarrassment about being a victim of police abuse also contribute to lack of reporting of abuses. Shortly after faculty at Bowie High School began to gather evidence for a possible lawsuit against the Border Patrol:

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<sup>98</sup> Robert Koulisch, Director, Border Interaction Project, "Pilot Study of the Relationship between the Lower Rio Grande Valley Community and Immigration Authorities," (Draft, May 1993).

<sup>99</sup> Koulisch's pilot study was performed by students at the University of Texas, Pan American, who interviewed acquaintances and residents of their communities. The study provides insights into the experience of a community that interacts on a daily basis with immigration law enforcement authorities.

Bowie students began to come forward to offer testimonials of their own. Stories of incidents that occurred two months, six months, one year, two years ago, stories of verbal abuse, threats, sexual harassment, several charges of physical abuse....<sup>100</sup>

As Robert Tomsho wrote in the *Wall Street Journal*, even U.S. citizens fail to complain because they:

...are humiliated to have been mistaken for a criminal or something other than a U.S. citizen. ,  
"You wouldn't even tell your friends about it," sighs Bowie High School secretary Grace Hernández.<sup>101</sup>

Indeed, as the case of Nieden Susie Díaz shows, you might not even tell your mother. After the lawsuit at Bowie High had gathered momentum, Díaz came forward with her story: a few years earlier, she had been stopped and beaten by Border Patrol agents who kicked her about twenty times, even after she had fallen to the ground. (See, Section III.D.) Despite being bruised and in pain afterwards, Díaz told no one, including her mother, about the incident until the Bowie High School lawsuit.

As we noted in *Brutality Unchecked*, the undocumented, because of their unprotected status, unfamiliarity with English, U.S. law and customs, and fear of deportation or imprisonment, are even less likely to complain formally. Unfortunately, as we detail below, immigration law enforcement authorities all too often use this vulnerability to guarantee impunity for their abuses.

### B. Problems with the INS Complaint Procedures

For some time, the INS has proudly boasted a low complaints-to-arrest ratio.<sup>102</sup> Presumably, this low ratio should be taken as an indication that INS agents rarely commit abuses. Instead, Americas Watch believes that the figure is an indictment of the existing complaint process, and a result of other mechanisms used by INS agents to dissuade victims from complaining. Americas Watch notes several fundamental problems with the complaint procedures, including:

- the lack of a complaint form;
- the lack of a comprehensive and systematic procedure for informing the public of its right to complain;
- a low ratio of investigators to total employees;
- the lack of an adequate appeals process; and

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<sup>100</sup> Louis Dubose, "Suing the Border Patrol: The Battle at Bowie High School," *The Texas Observer*, Dec. 11, 1992, p. 5.

<sup>101</sup> Robert Tomsho, "Matter of Principle: High School in El Paso Gives the Border Patrol A Civil-Rights Lesson," *Wall Street Journal*, February 23, 1993.

<sup>102</sup> Since 1989, the Immigration and Naturalization Service has boasted that there is only one registered complaint for every 17,000 arrests.



- incomplete complaint statistics and the failure to publish statistics on a regular basis.<sup>103</sup>

Another contributing factor in the underreporting of complaints is the belief on the part of INS officials that they are not responsible for receiving complaints alleging abuse by INS personnel. Border Patrol Chief for the San Diego Sector Gustavo de la Viña typified this attitude at a recent U.S. Commission on Civil Rights hearing, when he stated his belief that the complaint procedures were adequate since every detainee is handed over to a Mexican official to whom they can complain.

In addition to these factors, Americas Watch has found that complaints against INS agents are underreported for other reasons, including the use of tactics to dissuade victims from complaining, dissuasion tactics directed at other agents, and the threat of criminal counter-charges. Each of these factors is considered below.

### 1. Agents dissuade victims from filing complaints

INS agents use a variety of methods to dissuade witnesses and victims from reporting violations, ranging from misinforming them about the complaint procedures to threatening to bring counter-charges against them.

The reluctance of agents to assist witnesses and victims of abuse in their attempts to file complaints, in combination with the intentional blocking of such complaints, assures that the number of complaints actually received does not reflect the actual number of abuses. As a recent investigative report by the *El Paso Times* concluded, "the Immigration and Naturalization Service, the Border Patrol and U.S. Customs Service can tout low abuse rates because they regularly brush off attempts to report misconduct."<sup>104</sup>

The *El Paso Times* study showed that half of the agents who were approached by complainants ridiculed them, gave them incomplete information, told them to report complaints to the Mexican Consulate, or could not communicate in Spanish. In one particularly outrageous case, an INS inspector, baffled by a man who wanted to report a case of verbal abuse, eventually sent him to a fruit inspector with the Department of Agriculture to lodge a complaint.<sup>105</sup>

Americas Watch interviewed victims of abuse whose attempts to report violations were thwarted. For example, Juan Antonio Velásquez, who allegedly was beaten by a Border Patrol agent in El Paso, Texas, in February 1992, attempted to report the abuse several times, to no avail. (See, Section III.A.). On each occasion he was told that he would be contacted within days, but never was. Further, he was never informed that he could contact the Department of Justice's Office of the Inspector General or the FBI directly.

<sup>103</sup> Americas Watch, *Brutality Unchecked*, p. 3 (citing U.S. Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration*, 1980); Immigration Law Enforcement Monitoring Project, American Friends Service Committee, "Preliminary Comments on § 503(a)(5)(B) of the Immigration Act of 1990," 1991.

<sup>104</sup> Paul Salopek, "Tapes show flawed complaint process," *El Paso Times*, December 7, 1992.

<sup>105</sup> Paul Salopek, "La Migra: The Border Patrol's Wall of Silence," *The Texas Observer*, March 12, 1993, p. 10. Salopek used the information from the *El Paso Times* survey in this article.

## 2. Agents dissuade fellow agents from reporting abuses

In addition to dissuading witnesses and victims of abuse from filing complaints, INS agents also dissuade fellow agents from reporting abuses and violations. As described elsewhere in this report, the Elmer trial in Tucson revealed that agents adhered to a strict code of silence and rarely reported human rights abuses or infractions of INS rules. (See, Section III.E.) Agent Thomas Watson, Elmer's partner, has stated that he believes that he was fired for reporting his partner's role in the Miranda Valenzuela shooting, not for breaking agency rules, as the INS has stated. A recent *Los Angeles Times* article reported that FBI agents had complained in a letter that Border Patrol agents in the Tucson area were being "dissuaded" by fellow agents from reporting abuses.<sup>106</sup>

Last year, a Border Patrol agent stationed at Imperial Beach, California, testified against fellow agent Frank Jeschke at the latter's trial on assault charges.<sup>107</sup> After she testified that Jeschke had a reputation for abusive behavior, she began to receive threats in her mail. At Jeschke's hearing she had testified, "There is a code that we are not supposed to tell on other agents."<sup>108</sup>

## 3. Counter-charges

One of the most effective methods employed by INS agents to prevent abuses from being reported is the filing of intimidating criminal misdemeanor or felony charges against victims of abuse. INS agents are aware that most abused migrants will not defend themselves against trumped up charges and instead will accept voluntary return to Mexico or plea bargains, rather than pursue complaints against abusive agents.

In a recent article in the *Los Angeles Times*, a retired Border Patrol supervisor from San Diego explained:

The agents either...frighten the person into not making a complaint against them or they come up with some kind of a counter-charge: 'Yeah, I thumped up on the person, but he jumped me and we were fighting....'<sup>109</sup>

Recent examples of the filing of counter-charges include:

**José Ramírez Montaña:** The American Friends Service Committee reports that on February 6, 1993, José Ramírez Montaña was choked, kicked, and beaten by a Border Patrol agent near the San Ysidro/Tijuana border crossing. The Border Patrol agent became angry with Ramírez when he tried to protect himself during the attack, and dragged him to another location and beat him again.

After the beating, Ramírez was taken to Harbor Hospital in San Diego for treatment of his injuries, and then to the Metropolitan Correctional Center. When Ramírez stated that he was going to file a complaint to protest the beating, he was charged with assaulting a federal officer. Even though the agent involved apparently was not injured, Ramírez received a three-month sentence. Once he completes his sentence he likely will be deported by a judge and not allowed to re-enter the United States.

<sup>106</sup> McDonnell and Rotella, "When Agents Cross Over."

<sup>107</sup> Rotella and McDonnell, "A Seemingly Futile Job."

<sup>108</sup> *Ibid.*

<sup>109</sup> McDonnell and Rotella, "When Agents Cross Over."

**Evangelina Alcocer:** The case of Evangelina Alcocer is another instance of the use of counter-charges to dissuade complaints (see Section III.A.). Alcocer allegedly witnessed her mother being beaten by Border Patrol Agent Mario Bellamy on June 30, 1992. After Bellamy allegedly had taken the keys from Alcocer's automobile and tossed them to the ground for her to retrieve, he pointed his gun in her neck. When she stood up with her keys, Alcocer sprayed mace in Bellamy's face. As a result of the incident, Alcocer was prosecuted for assaulting a federal officer. Alcocer's mother, Margarita Rodríguez, and her sister, Socorro Rodríguez de Vásquez told Americas Watch that although Alcocer believed herself to be in the right, she feared that she might lose her children and her residency if convicted and therefore agreed to a plea arrangement.

**Manuel Quezada:** Last year, the final chapter was written in a widely-publicized case involving the alleged use of counter-charges to harass a victim of Border Patrol abuse. On January 14, 1992, 15-year-old Manuel Quezada de la Torre pleaded guilty to illegally entering the United States. Federal prosecutors dropped charges of assault that had originally been filed against the youngster.<sup>110</sup>

Quezada, a slight 5-foot-1, 98-pound teenager, and Border Patrol Agent Farrell F. Fisher give vastly different versions of the October 21, 1991 scuffle that resulted in Quezada's prosecution. According to court documents filed in the case, the Border Patrol alleged that Quezada punched Fisher in the face, bloodying his lip. In response, Fisher pushed the teenager, who fell back against a 6-foot wall and then onto the ground, splitting open his head.<sup>111</sup>

Quezada claims that he hit no one. While scrambling over a wall with a guide, he encountered Fisher. He and the guide jumped to the ground. In the process, Quezada contends the guide accidentally kicked Fisher in the mouth. The guide fled, leaving Quezada alone with the much larger Fisher. Quezada indicated that Fisher struck him with the flashlight on his head. Fisher's cut required two stitches; Quezada's wound was closed with three staples.<sup>112</sup>

Miguel Escobar, a spokesman for the Mexican Consulate summarized the Mexican government's version of the incident:

We never believed that a 15-year-old boy, who looks like 12—very slender, very small—did actually attack the officers of the Border Patrol. You don't try to attack someone as big and as well conditioned as these guys, who carry pistols.<sup>113</sup>

#### 4. Fear of extended detention as material witness

Another disincentive for an undocumented immigrant who wishes to bring a complaint or serve as a witness, is the possibility that he or she might be detained as a material witness in jail or at an INS facility. In cases where the FBI or the OIG investigates an allegation of criminal wrongdoing, an undocumented immigrant who cooperates with that investigation may be detained for several months.

<sup>110</sup> Alan Abrahamson, "Border Assault Case Against Boy Dropped," *Los Angeles Times*, January 15, 1992.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

## C. Failure of the Existing INS System to Process Complaints Adequately

### 1. Overview

The internal mechanisms for examining complaints against INS agents are designed to guarantee thoroughness by having cases of abuse investigated or overseen at several levels. In practice, however, the tiered system results in jurisdictional overlaps or gaps, often allowing agents to escape discipline for their abusive conduct. The diffusion of responsibility for review allows complaints to float through the system without anyone ensuring that agents responsible for abuse receive any sanction. From our many calls to the Office of the Inspector General and the Criminal Section of the Civil Rights Division of the Department of Justice, and our review of the many cases we examined firsthand, we have been able to piece together the following sketch of how the INS review system works. This overview is intended to point out flaws in the existing structure that allow abusive agents to continue unchecked.

Prior to 1989, complaints of INS misconduct were handled within the agency by its Office of Professional Responsibility (OPR). In April 1989, Congress established the Office of the Inspector General (OIG), within the Department of Justice, but outside the INS, to strengthen the internal audit and investigative activities of the department, including the INS. Many INS personnel who formerly worked for OPR became investigators with the OIG, as have many other former INS employees.<sup>114</sup> Thus, ex-INS personnel continue to review and investigate complaints of their former INS colleagues' misconduct.<sup>115</sup>

More worrisome is the fact that the vast majority of abuse cases are investigated by INS and Border Patrol managers themselves. According to the OIG, of the cases that the OIG deems worthy of investigation, nine out of ten are referred back to the INS and Border Patrol for investigation.<sup>116</sup> This tendency to send cases to the agency for investigation, combined with the fact that former INS and Border Patrol personnel staff make up roughly 40% of the investigations staff of the OIG, raises serious concerns about the independence of investigators.

A complaint may reach the OIG by various means. First, the OIG operates a hotline to receive complaints. Unfortunately, ignorance about the existence of the hotline is widespread. As the previous discussion of dissuasion by INS agents shows, individuals with complaints are rarely directed to the OIG's hotline number, even if they express an interest in complaining. No comprehensive efforts have been made by the INS to inform the public of its right to complain through the hotline.

Even if a complainant learns of the existence of the OIG hotline, there is no guarantee that she will be successful in lodging a complaint. For example, when Americas Watch staff called the OIG hotline one Saturday, we received a recorded message, in English only, indicating that the hotline's operation hours are Monday through Friday, 8:30 a.m. to 5 p.m. That recording also gave the number of a toll

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<sup>114</sup> According to the OIG, 55 of the 135 current OIG investigators are former INS employees.

<sup>115</sup> OPR continues to exist within the INS, although OIG staff responding to our inquiries could not describe what the OPR's duties are. U.S. Representative Jim Bates concluded in 1990 that "overlapping jurisdiction [of the OPR and OIG] is used as the excuse for inaction." Louise Palmer, "Agents of Abuse: Who Is Monitoring the Border Patrol," *Texas Observer*, December 21, 1990.

<sup>116</sup> This figure was given by an OIG supervisor during a May 4, 1993 telephone interview with Americas Watch. In fact, the Office of the Inspector General stated in a May 6, 1993, letter to Representative Don Edwards (D-CA) that between April 1989 and April 1993, the OIG investigated only 22 of the 635 civil rights complaints involving Border Patrol agents that it reportedly received—less than four percent of the total.



call, 24-hour fax line. Few, if any, undocumented immigrants have access to fax machines, even assuming they are able to understand recorded messages in English.

Americas Watch staff also called the OIG hotline at the Department of Justice three times during operating hours and asked, in Spanish, how to make a complaint. Two times the person who answered could not communicate in Spanish, and explained in English that she could not speak Spanish. A third time, the same person put the caller on hold for several minutes. When a man who could speak some basic Spanish took the call, he was asked how to make a complaint against a Customs agent. He gave the caller the Department of Treasury's OIG number. This number had a recording on in the middle of the day saying they would be closed until later in the afternoon. Even if the hotline had been staffed at the time of our call, the Department of Treasury's OIG has told Americas Watch that it does not handle civil rights complaints. If an employee of the OIG at the Department of Justice does not know which types of complaints the OIG at the Department of Treasury handles, it is unreasonable to expect a complainant to understand the correct procedure.

Another method by which the OIG receives complaints is from INS employees. When an INS employee or a victim seeks to complain, her complaint is ordinarily directed to a field office supervisor. The local supervisor, in turn, should pass the complaint on to OIG. There is no way to know with any certainty what percentage of complaints are actually forwarded to the OIG, because complainants are not notified about the status of the investigation into their complaint—or even whether an investigation has been initiated at all.

Complaints reaching the OIG are directed to different divisions, depending on their nature. If the complaint involves an allegation of an offense which is prosecutable under the federal criminal rights statutes (18 U.S.C. § 241, and 18 U.S.C. § 242), it will be referred to the Criminal Section of the Civil Rights Division of the Department of Justice. OIG personnel contend that if there is any doubt about whether a case is prosecutable, it is referred to the Civil Rights Division. If not, the case remains with the OIG.

## 2. The Criminal Section of the Civil Rights Division

The Criminal Section of the Civil Rights Division is responsible for determining whether to investigate and then prosecute complaints of abuse by INS and Customs agents. In the initial stage of review, if a complaint alleges facts that constitute a non-trivial, criminal civil rights violation (complaints at this stage are accepted at face value), then the Criminal Section will order the case investigated. If not, complaints that allege misconduct by INS employees are returned to the OIG.

According to the Criminal Section, because the INS is an entity within the Department of Justice, and because of concerns about the transient nature of victims or witnesses of INS abuse, determinations of whether or not to investigate a given complaint are ordinarily made by the next business day.

Once a case is determined to involve an allegation of prosecutable violation(s) of the civil rights law, the Criminal Section routinely forwards it to the FBI for investigation. FBI investigations are often lengthy. While they are ongoing, though, the agent may remain on the force.<sup>117</sup> The determination of whether an accused agent remains on active duty during an investigation is left to the agent's

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<sup>117</sup> And, as mentioned above, witnesses or victims who cooperate with the investigation may remain in jail or in an INS detention facility.

supervisor, even when the alleged violation is a serious criminal abuse such as rape as in the case of ex-Border Patrol Agent Luis Santiago Esteves (See, Section II.B.).

When the FBI completes its investigation, it forwards a copy of its investigative report to the Criminal Section of the Civil Rights Division and the local U.S. Attorney's Office. At this point, the Criminal Section determines whether to proceed with a grand jury indictment. This determination, however, is based on vastly different criteria than the decision to investigate. In order to bring a case to the grand jury, the Criminal Section must be convinced that there is sufficient evidence to prove *beyond a reasonable doubt* that the agent involved violated the complainant's civil rights, and that she or he did so *intentionally*. According to the Criminal Section, this standard is quite difficult to meet. As a result, few cases are brought to the grand jury.

We sought data from the Criminal Section regarding the percentage of cases referred to them which are investigated and brought to the grand jury. They suggested that we file a Freedom of Information Act request.<sup>118</sup> However, *El Paso Times* reporter Paul Salopek received from the Department of Justice figures summarizing these percentages for the past several years. According to the Department of Justice, the number of INS cases referred to the Civil Rights Division, the number investigated, and the number brought to the grand jury in fiscal years 1989, 1990, and 1991 were as follows:

Fiscal Year	Referrals	Investigations	To Grand Jury
1989	178	54	4
1990	213	61	2
1991	280	84	2

Source: U.S. Department of Justice<sup>119</sup>

The remarkably small number of cases brought to the grand jury is striking. Even taking into account the high standard of proof demanded in federal criminal prosecutions, the number of cases brought to prosecution seems to be unjustifiably low.

The scarcity of cases brought to the grand jury may be a result of a lack of thoroughness on the part of the Civil Rights Division in determining whether to prosecute. Commenting on this, one former Border Patrol Union representative told us that he's seen cases where "six to nine months of investigation are turned down [by the Civil Rights Division] in six to nine hours." In this regard, the case of Margarita Rodríguez and Socorro Rodríguez de Vásquez illustrates the way in which complaints of civil rights violations may not always thoroughly be considered. Despite the existence of numerous witnesses who saw Agent Bellamy repeatedly batter Rodríguez while she held her small son, the prior violent history of Agent Bellamy, the outrage of the Mexican Consulate in El Paso, and significant media coverage in the region, the Civil Rights Division opted not to prosecute him. When the agency informed the complainants that the matter did not "constitute a prosecutable violation of the federal criminal civil rights statutes,"<sup>120</sup> it referred to Ms. Socorro Rodríguez de Vásquez as "Vasquez De

<sup>118</sup> As described below in Section IV.4., this is a time-consuming exercise not likely to produce desired results.

<sup>119</sup> Paul Salopek, "La Migra: The Border Patrol's Wall of Silence," *The Texas Observer*, March 12, 1993, p. 7.

<sup>120</sup> Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division and Linda K. Davis, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice to Ms. Margarita Rodríguez and Mr. Socorro Vasquez De Rodríguez, December 7, 1992.

Rodriguez," and twice referred to her as *Mr. Rodriguez*.<sup>121</sup> These errors contradict the form letter's assertion that the agency had undertaken a "careful review"<sup>122</sup> of the FBI's investigative report.

### 3. INS and OIG Investigations

A decision by the Civil Rights Division that a case will not be brought to a grand jury is based on a determination, at least in theory, that there is insufficient evidence to prove that the agent involved *intentionally* violated the victim's civil rights *beyond a reasonable doubt*. Such a determination should not influence the subsequent review performed by the OIG. In practice, though, the Civil Rights Division's decision not to prosecute is often treated as an official exoneration. One OIG supervisor told Americas Watch, that the OIG has no reason to question the Civil Rights Division. The OIG investigation that follows is often perfunctory and fails to result in disciplinary action. Thus, the two-tiered system of review (in which complaints are first sent to the Criminal Section of the Civil Rights Division and then forwarded to the OIG) does not guarantee additional scrutiny. Instead, the process often acts to limit the basis for agent discipline to intentional acts which can be proven beyond a reasonable doubt (the standards used by the Civil Rights Division).

Once a complaint is returned from the Civil Rights Division, or if it has never been forwarded there, the OIG must determine what type of review the complaint will be accorded.<sup>123</sup> With each case OIG processes, it decides whether to perform the investigation using its own investigators or to assign the case to INS field offices for investigation by INS personnel. (See, Section IV.B.1.) The vast majority of cases fall into this second group, and are therefore investigated by non-OIG personnel. These non-OIG investigators who perform the majority of investigations are INS personnel, often from the same division as the suspected agent. Thus, Border Patrol agents often investigate other Border Patrol agents.<sup>124</sup>

Border Patrol agents told Americas Watch that there is broad discretion involved in this investigation process. Once the OIG decides to allow non-OIG personnel to review a case, a great deal of subjectivity is injected into the process. Agents told Americas Watch that field supervisors responsible for investigations often check with an agent's immediate supervisor to find out how diligently to pursue an investigation. As one former agent told us, if the agent investigated is liked by the supervisor, "the investigation usually won't find anything." When the report is complete, it is returned to the OIG which reviews the submission for procedural completeness, though not for substance.

<sup>121</sup> Socorro is a common name for women, though not men, in Spanish. In addition, the preposition "de" when it precedes a surname, indicates that a woman is married to a man with that surname. Thus, the last name "Rodríguez de Vázquez" could only refer to a married woman. Detailed evaluation of this case would have demonstrated that the only man involved in the incident was Agent Mario Bellamy.

<sup>122</sup> Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division and Linda K. Davis, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice to Ms. Margarita Rodriguez and Mr. Socorro Vasquez De Rodriguez, December 7, 1992.

<sup>123</sup> In fact, the majority of cases investigated by the OIG's investigations division are not claims of human rights abuse but other forms of misconduct such as bribery or theft.

<sup>124</sup> Even when a complaint is assigned to an OIG or INS investigator, if during the investigation a violation of the federal criminal civil rights statutes is discovered, the case should be returned to the Civil Rights Division of the Department of Justice.

According to reports, the OIG received 463 allegations against agents in fiscal year 1992.<sup>125</sup> Inspectors opened formal investigations in 30 cases of alleged abuses ranging from beatings to bribery. According to the *Los Angeles Times*, nine of these 30 investigations remained under investigation as of April 1993. Most of the remaining cases were determined to be unsubstantiated by investigators. Although the INS' refusal to disclose information about internal investigations makes it difficult to determine whether agents are ever sanctioned, there are indications that agents responsible for serious violations have not been subjected to internal discipline by the INS.

#### 4. Secrecy

Internal review of INS agents accused of committing abuses is shrouded in secrecy, with the public allowed only occasional glimpses of the procedures used to identify and punish abusive agents. As described throughout this report, those rare opportunities display a review system that is woefully inadequate. Because of its often damning nature, and due to the camaraderie within the ranks of the INS and its sub-agency the Border Patrol, information about internal review of agents is fiercely guarded.

The *El Paso Times* revealed how secretive the INS and OIG can be about their internal review processes. The newspaper sent 29 pages of letters, made telephone calls for months, and had former Senator Lloyd Bentsen (D-TX) intercede to expedite its request for information about the internal review process.<sup>126</sup> After the Department of Justice failed to respond to requests for information, the newspaper filed Freedom of Information Act (FOIA) requests. The reporter who filed FOIA requests about 22 well-documented allegations of abuse against El Paso-based Border Patrol agents was told by a source within the INS that, "that's exactly what they want you to do.... That way they can sit on (the requests) for years."<sup>127</sup> In the end, the newspaper reported that—nine months after the original requests—they had received no information about review procedures. Of the 22 cases, the Department of Justice reported that it had no record of 14, and that it could not divulge the names of the agents involved, whether or not investigations were continuing, or the result of those investigations. "I want you to know, we're not trying to stonewall or anything," a spokeswoman for the Department of Justice told the reporter.

Information about an investigation into an agent's alleged misconduct is not disclosed to the person who made the complaint either. Without exception, victims of abuse interviewed by Americas Watch stated that they had not been adequately informed by the INS about the status of investigations into abuses they had reported. None had any idea whether the agents they had accused of misconduct had been investigated or disciplined in any way.

When victims file lawsuits against INS agents, the agency frequently prefers to avoid the spotlight of a civil trial and instead often settles claims of abuse out of court. In one case, the U.S. government paid 15-year-old Eduardo Zamores, shot by Calexico, California Border Patrol Agent William Cypher in 1990, \$60,000.<sup>128</sup> In other instances, when cases are settled out of court, the agreement often mandates that the name of the accused agent be kept secret. For example, in March 1992, the victim

<sup>125</sup> McDonnell and Sebastian, "When Agents Cross Over."

<sup>126</sup> Paul Salopek, "Government says little -- if it answers at all," *El Paso Times*, December 6, 1992.

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*



of a September 1990 sexual assault allegedly committed by a Border Patrol agent in the San Diego area was awarded a "significant" sum in an out-of-court settlement with the INS; the name of the agent involved in the incident was not released as part of the agreement.<sup>129</sup> In our view, these examples suggest that the government is ill-served by an internal review system that is dysfunctional, and has to resort to paying to keep agents' identities and actions secret.

### 5. Failure to discipline agents

As demonstrated by cases throughout this report, the INS consistently fails to discipline agents involved in human rights abuses. When disciplinary actions are taken against abusive agents, they are applied inconsistently, with many agents avoiding sanctions altogether. Regrettably, the inadequacies of internal review and disciplinary procedures only become public when an agent commits an abuse serious enough to attract the public's attention. In these instances, it is often revealed that the agent had a history of abusive behavior but was never punished, dismissed or criminally prosecuted.

As described above, if an agent is found guilty of misconduct of a non-criminal nature, it is up to the agent's supervisor to choose what disciplinary action should be taken against him. Supervisors may exercise discretion in choosing how severely to punish an agent found guilty of misconduct. Inspector General Richard J. Hankinson testified on March 30, 1993 that, "We do not have very useful data at this point on how the INS disciplines its employees in response to our investigations or those of others."<sup>130</sup> Inspector General Hankinson added that, "...INS' treatment of misconduct is spotty. Whether action is taken, and the severity of the punishment, if any, seems to be uneven and sometimes happenstance."<sup>131</sup>

The disciplinary sanctions imposed can be grossly disproportionate to abuses committed. One particularly dramatic example is the case of a Border Patrol agent formerly stationed in Texas who was involved in two separate high-speed chases during the 1980's that left a total of four Mexican citizens dead, 16 injured, and resulted in court-ordered compensation payments of almost \$300,000.<sup>132</sup> The agent was never disciplined; after one of the incidents, his annual performance was rated as superior. He remains on the force.<sup>133</sup>

As we noted in our last report, in 1991, U.S. District Judge Harry Lee Hudspeth found that two agents wrongfully caused the drowning death of Armando Valenzuela in a 1987 incident. As a result, Judge Hudspeth awarded Valenzuela's survivors \$210,000.<sup>134</sup> Despite this, it was recently disclosed

<sup>129</sup> Americas Watch interview with Marco López, attorney for the victim, March 18, 1993.

<sup>130</sup> Statement of Richard J. Hankinson, Inspector General, Department of Justice, before the Subcommittee on Information, Justice, Transportation and Agriculture of the Committee on Government Operations, U.S. House of Representatives, March 30, 1993, p. 22.

<sup>131</sup> Testimony of Inspector General Hankinson, March 30, 1993, p. 23.

<sup>132</sup> Sebastian Rotella and Patrick J. McDonnell, "Allegations Fuel Calls for Reform in Border Patrol," *Los Angeles Times*, April 26, 1993.

<sup>133</sup> *Ibid.*

<sup>134</sup> Americas Watch, *Brutality Unchecked*, p. 22, citing "Government Ordered to Pay \$210,000 to Kin of Man

that neither of the agents was ever disciplined.<sup>135</sup> Border Patrol Agent William Cypher, whose 1990 shooting of 15-year-old Eduardo Zamores cost the government \$60,000, similarly escaped reprisal. Cypher's supervisor told the *Los Angeles Times* that the agent was transferred to Texas but never disciplined.<sup>136</sup>

Many individuals familiar with disciplinary actions believe that the punishment meted out to a particular agent depends more on that agent's relationship with his or her supervisor than with the seriousness of the abuse he or she has committed. A former Border Patrol agent told Americas Watch, "If you punch somebody's face in and you're [on good terms with the supervisor] you're okay." A seven-year veteran of the Border Patrol stated, "In about 70 percent of the offense categories, the punishments can range from verbal reprimand to dismissal. And there's certainly cronyism in how it's handled."<sup>137</sup>

One result of this inconsistent and inadequate application of disciplinary sanctions has been the development of the attitude among many agents in the field that they can get away with anything as long as they have a good relationship with their supervisor. This attitude is evident throughout this report. For example:

- Agent Michael Elmer made no attempt to clean or hide the weapon that he used to shoot and kill an unarmed Mexican. It is apparent that he did not believe any investigation into his actions would take place, even though there were witnesses. (See, Section II.A.)
- Juan Antonio Velásquez told the Border Patrol agent who had beaten him that he could report him. (See, Section III.A.) The agent responded that he would not get into trouble, and showed Velásquez his name plate, certain that he would not be punished for his actions. Indeed, it appears that he never was disciplined.
- Evidence shows that Border Patrol Agent Mario Bellamy battered Margarita Rodríguez, (See, Section III.A.), a middle-aged woman holding her two-year-old son in front of an apartment complex full of witnesses in broad daylight, apparently secure that he would never be disciplined.
- Convicted rapist Luis Santiago Esteves apparently recognized that the lack of functional disciplinary mechanisms in the Border Patrol would allow him to prey freely on his victims. He told one of his alleged victims in a telephone conversation, taped by police, "In the desert, you do what you please."<sup>138</sup>

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Drowned in Rio Grande," *Houston Chronicle*, February 6, 1991.

<sup>135</sup> Rotella and McDonnell, "A Seemingly Futile Job."

<sup>136</sup> McDonnell and Rotella, "When Agents Cross Over."

<sup>137</sup> Paul Salopek, "La Migra: The Border Patrol's Wall of Silence," *The Texas Observer*, March 12, 1993.

<sup>138</sup> McDonnell and Rotella, "When Agents Cross Over the Borderline," *Los Angeles Times*, April 22, 1993.

#### D. Problems with the Customs Services' Complaint Procedures

The complaint and review procedures for the Customs Service differ from those used by the INS. Customs Service complaints are submitted, by the public or by Customs Service personnel, to the Office of Internal Affairs within Customs. As explained above, the allegations of abuse against INS employees are submitted to the OIG at the Department of Justice. However, the OIG at the Department of Treasury does not receive or investigate civil rights complaints against Customs agents. Further, because the Customs Service is not part of the Department of Justice, allegations of criminal civil rights violations are reviewed on an ordinary, rather than an expedited, basis by the Civil Rights Division at the Department of Justice.

Americas Watch has monitored the Customs Service complaint and review procedures for only a limited time. Nonetheless, we have serious concerns about the mechanisms currently in place to receive allegations of abuse.

In many regards, the complaint procedures for the Customs Service suffers from the same weaknesses that plague the INS. For example, the Customs Service, like the INS, fails to make complaint forms available to the public in a consistent fashion. Additionally, Customs agents, like their INS counterparts, often dissuade complainants from lodging allegations of abuse and, on occasion, have filed counter-charges against victims to deter them from filing complaints against agents.

##### 1. Complaints form

Customs Service officials have informed Americas Watch that a standardized complaint form is made available to prospective complainants. However, the form is designed for the receipt of a wide range of complaints involving problems such as theft and property confiscations. More problematic than the design of the form, though, is the fact that Customs personnel fail to provide information or to furnish the form to complainants consistently.

Leo Wilde, an El Paso resident who alleges that he was beaten by a Customs Service agent (see below) testified in plague that he spoke with eight different people at the Customs Service before his complaint was accepted. When he tried to present a complaint that he had already written, a Customs Service agent made him re-write it in front of him.

##### 2. Agents dissuade victims from filing complaints

It is disturbing to note that in each case of alleged Customs abuse documented in this report in which the victim sought to complain, agents failed to respond appropriately. In one recent case documented above, Francisco Jayme attempted to report abusive treatment by agents after he was subjected to a humiliating strip search at the Customs office at a border crossing at El Paso in January 1993. (See, Section III.C.). After he was released from custody, he returned to the Customs station and spoke with a supervisor who explained that the shift had just changed and that he could not accept a complaint. According to Jayme, the supervisor told Jayme to go to a Customs office in El Paso without providing a phone number, the exact street address or the name of a person to contact. A few days later, Jayme returned to the station to complain. This time the supervisor on duty spent about 15 minutes trying to dissuade Jayme from lodging a complaint.

### 3. Counter-charges

Customs Service agents also resort to filing intimidating criminal misdemeanor or felony charges against victims of abuse to dissuade them from pursuing complaints. In a recent, well-publicized case, El Paso resident Leo Wilde was charged with assault after he was allegedly beaten severely by a Customs agent at the Paso del Norte Bridge checkpoint in El Paso in December 1991. Wilde was acquitted of all charges on August 28, 1992.

## V. RECOMMENDATIONS

It is disappointing to note that virtually all of the recommendations made by Americas Watch in its May 1992 report must be repeated now—nearly a full year after they were first written—because there has been no discernible change in INS policy. As we noted last year, many of the problems documented by Americas Watch can be remedied by policy and attitudinal changes on the part of the INS and Customs Service and their agents.<sup>139</sup> Others require regulatory and statutory changes. In particular, the reform of disciplinary review mechanisms for allegations of human rights violations committed by both services requires federal statutory change, if those mechanisms are to be fully effective.

Americas Watch calls upon the Clinton administration to apply international human rights standards here in the United States by appointing an INS Commissioner who is committed to curtailing abuses and demanding accountability for culpable agents. Similarly, the Customs Commissioner should take steps to guarantee that the basic human rights of those with whom Customs agents come into contact are respected and that abusive agents are disciplined appropriately.

The changes suggested below are imperative if the rights of undocumented immigrants, and those of documented residents and U.S. citizens, are to be respected in the border region. In particular, Americas Watch calls upon the INS, the Customs Service and the U.S. government to implement immediately the following recommendations:

I. All individuals within the United States, regardless of their immigration status, are entitled to respect for their basic human rights. The INS needs to redirect its mission to emphasize the promotion and protection of human rights in the fulfillment of its responsibility to enforce U.S. immigration laws. Similarly, the Customs Service must respect the human rights of those with whom it interacts. Both Services must make clear to their personnel that failure to respect the legally protected human rights of any person will be punished.

II. INS and Customs agents should, as far as possible, apply non-violent means before resorting to the use of force or firearms. Whenever the lawful use of force or firearms is unavoidable, INS and Customs agents should:

- A. Employ force only as necessary to attain a legitimate objective and only in proportion to the importance of that objective.
- B. Minimize damage and injury, and respect and preserve human life.

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<sup>139</sup> The report which we issued last year only considered abuses and recommendations for change by the INS. This report also considers recommended changes which should be adopted by the Customs Service.



- C. Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.
  - D. Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
- III. Firearms should be reserved only for the protection of agents or third persons from imminent threat of death.
- A. Agents should not brandish their firearms in the course of everyday enforcement.
  - B. Agents should never shoot a fleeing suspect unless absolutely necessary to preserve the lives of others.
  - C. Agents should never fire warning shots.
  - D. Weapons inspections should be thorough and consistent so that immigration law enforcement agencies are not dependent solely upon agents' reports regarding firearms incidents.
  - E. Agents should be strictly prohibited from carrying non-issue weapons when they are on duty. Lax weapons policies hinder weapons testing and encourage unauthorized and abusive firearms use by agents.
- IV. Nonlethal devices (i.e., stun guns, gas guns, nonlethal projectiles, and vehicle stopping devices) should be used in preference to firearms and other lethal weapons.
- V. All equipment carried by INS and Customs agents should be used only for its intended purposes (e.g. flashlights and hand held radios should not be used as weapons).
- VI. When injury or death is caused by the use of force or firearms, INS and Customs agents should report the incident immediately to their superiors.
- VII. INS and Customs agents should never use force, threats of force, or arbitrary detention as forms of extrajudicial punishment.
- VIII. A fully empowered and independent Review Board, outside the INS and Customs Service should be created to investigate all complaints of abuse directed at INS and Customs agents.
- A. Review Board staff should be experienced in investigating abuses by law enforcement personnel. INS and Customs agents should not be immediately eligible for employment with the Review Board.
  - B. All shootings and instances of serious abuse should be reported immediately to the Review Board. The failure to report an incident to the Review Board should be a sanctionable offense.
  - C. The Review Board should develop a system whereby the records of agents who have been the subject of repeated complaints are reviewed by the appropriate authorities.
  - D. The Review Board should make public the names of all agents alleged to have been involved in cases of serious abuse, unless there is specific evidence that doing so would jeopardize the safety of the agents involved or hinder the investigation. If these special circumstances are temporary, the names should be released when the circumstances no longer exist.
  - E. Agents involved in shootings or other incidents that result in death or serious injury should be assigned to restrictive duty or suspended until the circumstances are clarified and the Review

XII. All INS and Customs agents should be required to undergo human rights training to increase their understanding of the basic rights of the individuals with whom they are in contact daily.

\* \* \* \* \*

This report was written by James L. Cavallaro, Jr., Americas Watch Orville Schell Fellow, and Allyson Collins, Human Rights Watch Research Associate. It was edited by Ellen Lutz, Human Rights Watch California Director and Anne Manuel, Americas Watch Associate Director.

\* \* \* \* \*

Americas Watch was established in 1981 to monitor and promote the observance of internationally recognized human rights standards in the Americas. Americas Watch is one of the five regional divisions of Human Rights Watch. The Chair of Americas Watch is Peter D. Bell; Vice Chairs, Stephen L. Kass and Marina Pinto Kaufman; Executive Director, Juan E. Méndez; Associate Directors, Cynthia Arnson and Anne Manuel.

Human Rights Watch is composed of five regional divisions—Africa Watch, Americas Watch, Asia Watch, Helsinki Watch and Middle East Watch—and the Fund for Free Expression. Its Chair is Robert L. Bernstein; Vice Chair, Adrian W. DeWind; Executive Director, Aryeh Neier; Deputy Director, Kenneth Roth; Washington Director, Holly J. Burkhalter; Associate Director, Gara LaMarche; California Director, Ellen Lutz; Press Director, Susan Osnos; Counsel, Jemera Rone.

Board completes its investigation; no agent involved in such an incident should be reinstated without first receiving stress counseling.

F. All cases in which the Review Board finds that an agent committed an offense which is prosecutable should be turned over to the relevant authorities for prosecution. Such referral, however, should not serve as an excuse for inaction by the Review Board. Neither should the decision by a prosecutorial agency not to prosecute a case be treated by the Review Board as an exoneration of the agent or agents involved.

G. All cases in which the Review Board finds that an agent violated INS or Customs regulations should be forwarded to appropriate supervisory personnel with a recommendation for sanctions. Review Board recommendations should be implemented by supervisory personnel; where these personnel refuse to implement a Review Board recommendation, they should be required to justify promptly and in writing their reasons for failing to do so.

IX. Procedures should be established to enable undocumented immigrants to file complaints against INS and Customs agents without fear of reprisal.

A. The public should be effectively informed of its right to file complaints against INS and Customs abuse. All INS and Customs personnel should be fully familiar with the complaint process. Easy-to-understand complaint forms should be supplied and an explanation of the complaint procedures, in the languages of the immigrant community, should be displayed prominently in all INS and Customs offices. A 24-hour, toll free phone number, staffed by persons who speak the languages of the immigrant community, should be established for the purpose of receiving complaints against agents of the INS and the Customs Service.

B. All persons who file complaints should be informed when their complaints are received, given periodic status reports, and provided access to an appeal process.

C. The appeal process should be public and transparent, except in unusual cases in which specific evidence is presented as to why the Review Board should do otherwise.

D. Under no circumstances should reprisals be taken against undocumented immigrants who file complaints, nor against agents of the INS and Customs Service who denounce violations to the Review Board; cases in which reprisals are alleged should be referred to the Review Board and treated like other complaints of abuse.

E. No information obtained regarding the immigration status of witnesses to alleged violations committed by INS and Customs agents which is obtained in connection with investigations into such abuses, should be used against such witnesses in immigration proceedings.

X. All INS and Customs agents who regularly come into contact with the public should be in uniform and clearly identifiable by name. All INS and Customs vehicles should bear large, fluorescent, reflective two or three-digit identification numbers.

XI. The INS and Customs services should eliminate all strip and body cavity searches unless there is probable cause to suspect that a person possesses contraband. Strip and body cavity searches should never be used to intimidate, harass, or humiliate the person being searched. Whenever possible, searches should be conducted by third parties, rather than the arresting agent.

Mr. MAZZOLI. I guess the issue is pretty clear. I mean at least three of the four on this panel and many others feel that, to use your term, it is broke and therefore it needs to be fixed, but in a fundamental way, not just simply by working with existing procedures.

And then there is a body of thought represented by one of the panelists today and then by others in and out of government that says that, while there are flaws and defects and shortcomings, those can be corrected within the system currently in place, augmented by the citizens panel which is being formed and other changes which clearly will ensue from this.

Obviously any time there is a hearing of this nature, there is a signal being sent that this is a serious problem which does need to be dealt with, and that tends to expedite the getting together of paperwork and the approvals and things like that. So even if this legislation doesn't pass as such, I think it certainly has an effect.

I guess the concern that I would have is, in the gentleman's bill it does appear that the procedure does allow for anonymous tips, in effect, anonymous complaints, third party complaints, given to the panel, who could then, using subpoenas or not using subpoenas, using its investigative authority, conduct a hearing. It cannot make any final adjudication or take any final action, but it can make a recommendation, but can do so without a hearing, which means that only at the time of a hearing is an employee or an agent guaranteed counsel.

It just seems like that does give opportunity for people to have a faultless record impugned, perhaps indelibly, to the point that that individual could never seek to be a supervisor or move from INS into other kind of enforcement authority, simply because of a lot of anonymous tips which wound up to be groundless. That of course was one of the problems that could be filed in your file; and secondly, maybe acted on but without giving the employee the opportunity of assembling his or her information because they are not represented, they don't even know what is going on possibly.

So I think that there ought to be some protections to the Customs Service employee or the Immigration Service employee at the early stages of this so he or she can assemble what they need to counteract what might be put forth by anonymity.

Mr. MARIO MORENO. With regard to your comment about the hearing, I call your attention to page 7, the line starting with 6, "The panel shall conduct hearings on a complaint if the alleged abuse is of a serious nature."

Mr. MAZZOLI. Well, of course, if it is nonserious, it can still go in your file, and I am not sure what "serious" is.

Mr. MARIO MORENO. That was purposely left vague, I am sure, to give the commission latitude to come up with regulations.

Mr. MAZZOLI. Well, that is right. That is what we always do. That is what we did in the cable TV bill, and you see what is happening now. I am sure in Tucson you are having the same problems, trying to figure out what did we say or what didn't we say. How much did we just kind of allude to something and let the details be filled by the FCC? And the details weren't filled in.

Again, I think there certainly are some provisions that are worthy but some that are a little bit provocative.



The gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman, and, again, thank you for the comments with regard to the particular provisions of the bill and, again, some of the things that many people would like to work on to perhaps improve the content of the bill.

Thank you all for your testimony.

Councilman, you mentioned the situation in Arizona, and apparently you differed a bit from what we heard the Commissioner say with regard to, was it the Phoenix station was up and running and its house was in order?

Mr. WHEELER. Well, the Acting Commissioner mentioned a process in Tucson that does not exist, and she mentioned some relationship with the Phoenix City Council member that is a very big surprise to me as well.

Mr. BECERRA. Let me ask you to do us a favor since the record will be left open. If you could provide us with information on what the status is in Phoenix of the relationship the city council and its organs of city government with the INS there, I would appreciate that. I don't recall exactly what the Acting Commissioner's comments were, but obviously we could ask her as well, so we can reconcile the statements made both by the Commissioner and what you have just said.

Mr. WHEELER. I will, Mr. Chairman and Mr. Becerra, I will be happy to do that.

There is another note that is contemporary in Phoenix as we sit here. There has been a pattern, again in the newspapers, of the INS, the Border Patrol, going into public schools and arresting children. So whatever mechanism she was referring to, obviously they are falling on deaf ears because of that.

Mr. BECERRA. And correct me if I am wrong, and I can't remember where I heard this, and I just heard it a couple of days ago. I heard something about a possible rape having occurred somewhere in Arizona.

Mr. WHEELER. Mr. Chairman and Mr. Becerra, yes, there is ample media attention. There is a Border Patrol agent who has been arrested. Bond has been set, reduced from \$100,000 to \$25,000 in the last week in Nogales, AZ, for the rape of an undocumented woman.

Mr. BECERRA. And that, I suspect, is proceeding through the judicial process, through a criminal complaint?

Mr. WHEELER. Yes, sir.

Mr. BECERRA. Are you aware of any particular INS action against the employee?

Mr. WHEELER. He is on administrative leave with pay. That is the current status.

Mr. BECERRA. Thank you.

Since we are going to be running out of time, I will try to be brief.

Mr. Stein, I read through your testimony, and I was interested. You make no reference to any particular abuses that may have been committed. Is it FAIR's or your position that no abuse has been committed by INS officers, say within the last 10 or 12 years?

Mr. STEIN. No, not at all. I think I did mention there was an incident that apparently gave rise to some of the issues here on page—

Mr. BECERRA. Right, that there were acquittals in two cases.

Mr. STEIN. A couple of acquittals in two cases. But there obviously have been a number over the last 10 years of incidents.

Mr. BECERRA. And, by the way, the bill is not premised only on cases where, as you mentioned, there have been acquittals but cases where there have been convictions as well.

Have you had a chance, Mr. Stein, to read the report submitted by the Inspector General of the Department of Justice recently, the March 30 report with regard to the INS?

Mr. STEIN. I don't think I have read that particular report. I would be happy to read it.

Mr. BECERRA. I would commend that for your reading, because it does point out some of the deficiencies within the agency, and since you haven't read it I won't ask you any questions about it.

But let me turn to something that—I am not really certain how to ask this or do this, but you mentioned a couple of things that intrigued me. On page 13 of your testimony with regard to your comments about the American Friends Service Committee and Quakers generally, you mentioned that they have a position that perhaps if the border situation is caused to some degree by our artificial border, that we should take that into account, or the Quakers and the AFC should take that into account in conducting themselves, and citing in that first full paragraph on page 13, line 3, that first sentence begins, "While this is a proper and appropriate function for an organization such as theirs," meaning AFSC and the Quakers, "this perspective is important to note because it is likely to bias or skew the treatment of material received by AFSC investigators and their affinity group associates in analyzing incidents of border abuse,"

Then further on down in your second to last sentence in that paragraph, you state, "It is difficult to view H.R. 2119 with its broad and unmanaged intrusions in the daily operations of the Border Patrol, INS, and Customs Service without considering the possibility that the legislation is designed to achieve objectives that the overall majority of the American people ultimately would not support."

I mention that, and I wouldn't have brought this up, but it seems to me that to some degree you have raised the issue of not only the credibility of the AFSC but also their work, and that disturbs me because I have a great deal of respect for what the American Friends Services Committee has done, and I must say it disturbs me, for example, that, as I understand it, FAIR, your organization, receives money from a number of different sources which I would have reason to question.

For example, the Pioneer Fund, a trust fund founded in 1937 by a Mr. Whitecliff Draper, has promoted in the past many things that I think a number of Americans would find very distasteful—for example, promoting the sending of blacks back to Africa.

Mr. STEIN. Excuse me, Mr. Becerra, may I ask you what the source of that statement is?

Mr. BECERRA. Sure. I will give that to you in a second, if I can go ahead and finish. Well, let me give you the source right now. I am reading from a press release issued by FAIR, Fairness and Accuracy In Reporting, and it makes certain references—well, let me ask you, do you know of the Pioneer Fund?

Mr. STEIN. Well, having had that issue raised, I have investigated the allegation and have found that it is false.

Mr. BECERRA. But you know of the Pioneer Fund?

Mr. STEIN. They are 1 of about 35 foundations in the 50,000 members that support FAIR.

Mr. BECERRA. I see.

Mr. STEIN. And they—Pioneer Fund—constitute about 3 percent of our income.

Mr. BECERRA. And how much would that be, that 3 percent?

Mr. STEIN. About \$100,000 per year.

Mr. BECERRA. OK. So when it says here, according to Internal Revenue Service records, FAIR has received about \$600,000 from Pioneer since 1988, that would be untrue?

Mr. STEIN. Since 1988? That is probably a little high.

Mr. BECERRA. So is it true or untrue?

Mr. STEIN. I am not sure. It sounds a little high.

Mr. BECERRA. OK.

So what was the \$300,000 figure you just mentioned?

Mr. STEIN. No. I think what I said was our annual budget this year is close to \$3 million. This annual general support grant—similar to one we receive from lots of foundations—is untied to anything except our general operations, and is approximately \$100,000.

But would you like me to respond on the question of the Quaker?

Mr. BECERRA. No, not yet.

Let me ask you. It states, and it could be wrong. It says the Pioneer Fund's charter states that it is "committed to the proposition that people of different ethnic and cultural backgrounds are, on the basis of their heredity, inherently unequal and can never be expected to behave or perform equally." Are you familiar with that provision within the charter of the Pioneer Fund?

Mr. STEIN. You can continue to pursue this line of questioning, but that statement is flatly wrong. That is a quote out of a newspaper article. That is a quote from a reporter in the Washington Times.

Mr. BECERRA. I am only asking you if you know if that is within the charter of the Pioneer Fund.

Mr. STEIN. Yes, and it is not.

Mr. BECERRA. OK.

Would you mind providing me the source of the information that leads you to say that that is not true? Is that OK? Can you provide that for the record?

Mr. STEIN. The Foundation Center's filings, which all foundations are required—

Mr. BECERRA. If you could just provide for us, I would appreciate it.

Mr. STEIN. The Pioneer Fund is an organization which, as far as I know, is recognized by the Internal Revenue Service as a charitable private foundation whose charitable purposes are, frankly,



you know, their own business, but ultimately—we have in our founding documents and in every annual report taken the position that immigration policy should not discriminate on the basis for or against persons on the basis of race, religion, culture, or national origin. We would not accept any grant by anyone——

Mr. BECERRA. Mr. John Tanton is one of the founders of your organization, correct?

Mr. STEIN. Yes.

Mr. BECERRA. OK. And I believe in the late eighties he wrote an internal memo in which he stated——

Mr. STEIN. An internal memo to what?

Mr. BECERRA. There was a memo written by him.

Mr. STEIN. Not for FAIR.

Mr. BECERRA. OK. There was a memo written by Mr. Tanton in which he discusses “the dangers of a Hispanic population explosion” and again I am quoting what I have——

Mr. STEIN. What are you quoting? You are not quoting from a memo.

Mr. BECERRA. If you could let me finish, and I am not saying that I have heard him say this is.

Mr. STEIN. I would just caution you that that press release, which I have seen, is full of inaccuracies and errors.

Mr. BECERRA. Then you can respond to that, but if I can just go ahead and finish with the question, in this memo, it is stated in this particular press release that Mr. Tanton has said that, “Whites will see their power and control over their lives declining.” He continues by saying, “Perhaps this is the first instance in which those with their pants up are going to be caught by those with their pants down.”

Mr. Tanton still is a member of the federation’s board. Is that true?

Mr. STEIN. Well, yes, and he, as far as I know, intends to continue being. He received a Chevron Conservation Award in 1990.

Mr. BECERRA. Again, I am not certain of the accuracy of these particular statements myself, but they have been reported as having been stated.

If you have any information that these are untrue, please feel free, and the record will remain open, and you can please feel free to go ahead and submit those documents or that information for us to review.

Mr. STEIN. Well, I would like to respond, if I might. On the first matter of the AFSC, the point about their political views on the matter international boundaries is raised solely to raise the possibility of the excessive credulity in analyzing uncorroborated allegations of border abuse, and it isn’t a matter of bearing on their credibility as much as it is bearing on their credulity, if you will.

Mr. BECERRA. I’m not sure if I see the distinction, but continue on.

Mr. STEIN. Well, it is a matter of ideological bias in analyzing factual information that comes to their attention.

Mr. BECERRA. In that case, you are questioning their credibility.

Mr. STEIN. No. I am questioning whether or not an assessment is accurate or should be taken on its face value.



Mr. BECERRA. And isn't that, in effect, a questioning of whether or not they are credible?

Mr. STEIN. No. It says you should analyze the issue more closely to determine whether or not what they are saying is true.

Mr. BECERRA. OK. So that is the answer to that.

Do you have anything else you wish to say, or anyone else, before we close the hearing?

Mr. STEIN. I would like to say that we are an organization which is highly visible and our policies are set by our board of directors and that donors do not direct our policy or tie grants to policies which are at variance with our organizational purposes, and I think our record stands for itself. And I would appreciate in the future, if you have information like that which you want to read in the record, you at least give me the courtesy of a phone call so I can tell you if there is material which is in there which is flat out wrong.

Mr. BECERRA. Well, you have every opportunity, as I said before, to submit for the record any information that would show that this information is inaccurate, and I welcome you to please do so. But as far as I can tell, this is information that went out——

Mr. STEIN. Have you ever heard of Whitecliff Draper? Do you know who he was?

Mr. BECERRA. I have heard of him, but I don't know——

Mr. STEIN. But do you know who he was? May I ask you who he was?

Mr. BECERRA. No. I don't think there is any reason for me to go into who this gentleman was. If the statement is true or not, you can provide information to corroborate or to refute it. I think that is the point that you may be trying to make. But at this stage I am just trying to figure out some information that I heard about, some of the sources of your funding and perhaps some of the ideologies that perhaps predicate some of the actions taken by those who at least give you money, perhaps not FAIR's positions, but those who give you money.

Unless there is any further comment on some of the questions that were raised or comment on the legislation before us, I think what we will do is close the hearing.

Mr. WHEELER. Mr. Becerra.

Mr. BECERRA. Yes.

Mr. WHEELER. I would like to include in the record, and I will give your staff a copy of the resolution passed by the City Council of Tucson in support of H.R. 2119.

Mr. BECERRA. Thank you very much.

[The resolution follows:]

ADOPTED BY THE  
MAYOR AND COUNCIL  
SEP 27 1993

RESOLUTION NO. 16426

RELATING TO IMMIGRATION AND NATURALIZATION; SUPPORTING THE CREATION OF A FEDERAL REVIEW COMMISSION FOR THE OVERSIGHT OF IMMIGRATION ENFORCEMENT ACTIVITIES.

WHEREAS, issues relating to the enforcement of immigration and naturalisation laws by the border patrol and other agencies of the U.S. Department of Justice have long been of paramount concern to the Tucson community; and

WHEREAS, recent, highly publicized incidents involving the possible violations of human rights of undocumented workers and other individuals by Federal immigration agents have heightened the need for increased scrutiny of the activities of those agencies of the Federal government responsible for the administration of immigration and naturalization laws; and

WHEREAS, H.R. 2119, a bill to establish an Immigration and Enforcement Review Commission, is currently pending before the Congress of the United States. This Commission would be responsible for investigating complaints of Civil Rights abuses by the federal immigration services, would make recommendations to the services regarding discipline of employees responsible for committing abuses, and would make policy recommendations to the services as appropriate; and

WHEREAS, the Mayor and Council of the City of Tucson wishes to express its wholehearted support for, and urge the passage of, H.R. 2119.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

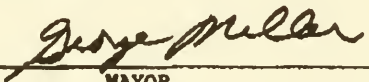
Section 1. That the Mayor and Council of the City of Tucson expresses its wholehearted support for the creation of the Immigration and Enforcement Review Commission, and urges the Congress of the United States to pass H.R. 2119 to establish this Commission.

Section 2. The City Clerk is hereby authorized and directed to send a copy of this Resolution to each member of the Arizona Congressional Delegation.

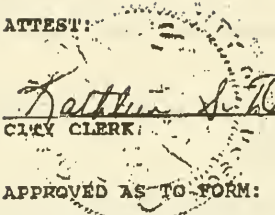
Section 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

Section 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately effective, an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

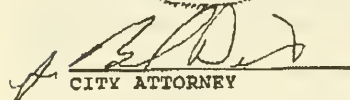
PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, SEP 27 1993.

  
MAYOR

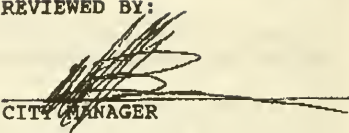
ATTEST:

  
Kathleen S. O'Neil  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

REVIEWED BY:

  
CITY MANAGER

TA  
TR:cds  
9/22/93

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Mr. JOSÉ MORENO. Mr. Becerra.

Mr. BECERRA. Yes.

Mr. JOSÉ MORENO. I would like to read into the record a finding that the Federal court in the Western District of Texas made regarding the Bowie High School case that I stated when it stated that, "Victims of abuse by the El Paso Border Patrol failed to report the abuse because, number one, victims fear retaliation by the INS and by the El Paso Border Patrol in the form of deportation, criminal charges, or loss of legal immigration status for themselves or family members; number two, victims begrudgingly accept this type of abuse of law enforcement action as a way of life; number three, victims have a sense of futility in filing grievances as victims are rarely, if ever, informed of the disposition of their complaints; and, number four; victims believe the complaints will neither be rigorously investigated nor officers duly disciplined."

Mr. BECERRA. And that is from the court itself?

Mr. JOSÉ MORENO. Yes, it is, sir.

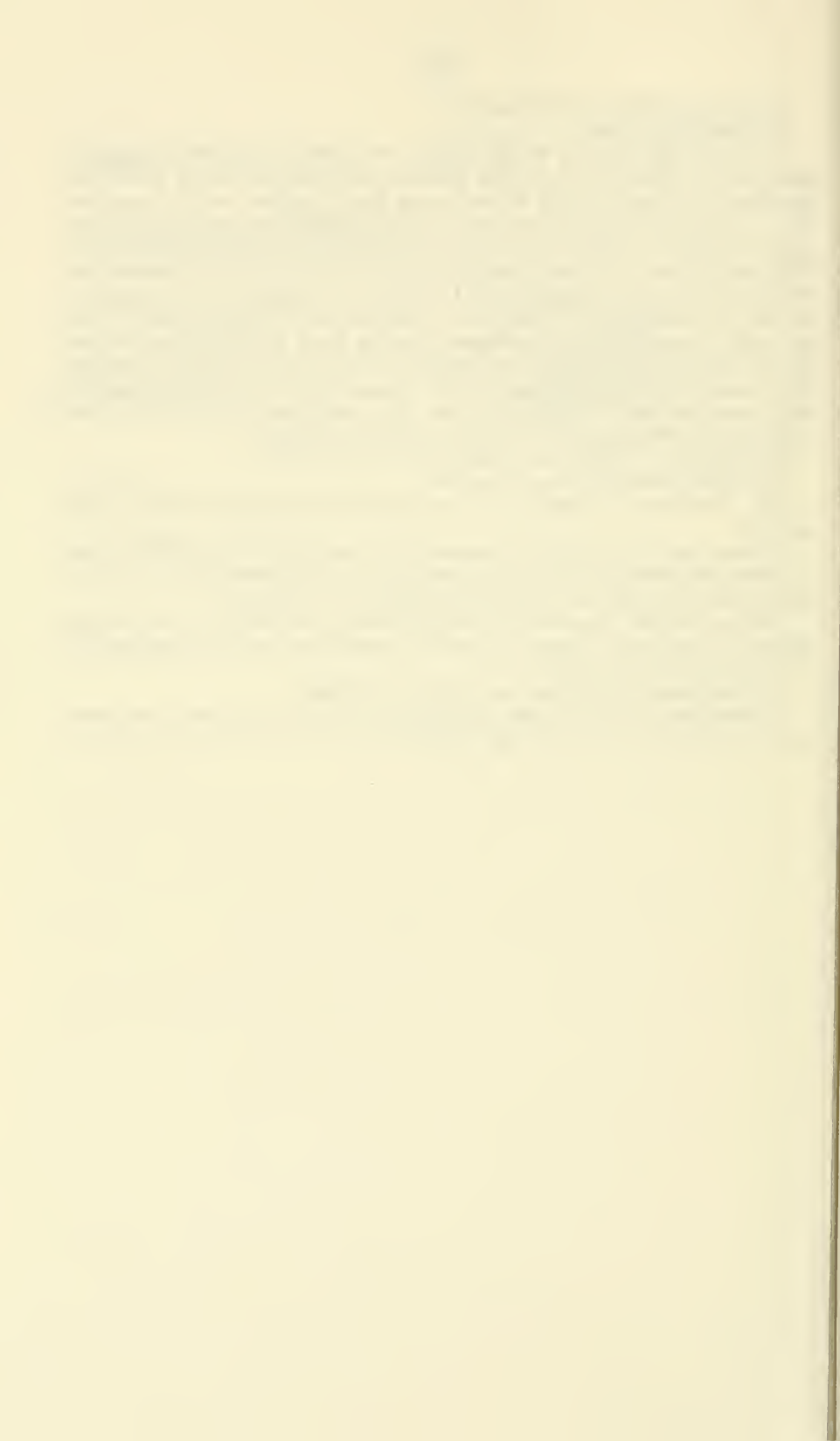
Mr. BECERRA. Thank you very much for placing that in the record.

Unless there is further comment, this hearing is now closed, and I thank all those on the panel and those who preceded for having come and provided information. Thank you very much.

[Subcommittee Note.—Civilian Review of Policing: A Case Study Report, New York Liberties Union Foundation, will be retained in the subcommittee's files]

Mr. BECERRA. This hearing is now concluded.

[Whereupon, at 1:38 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]



## APPENDIXES

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### APPENDIX 1.—STATEMENT OF RICHARD J. HANKINSON, INSPECTOR GENERAL, DEPARTMENT OF JUSTICE, BEFORE THE SUBCOMMITTEE ON INFORMATION, JUSTICE, TRANSPORTATION AND AGRICULTURE, HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Good Morning Mr. Chairman.

I am pleased to appear before this Subcommittee again. Mr. Chairman, I congratulate you on your new leadership position with this Subcommittee. I note also that there are a number of new members, and I look forward to working with each of you on Subcommittee issues relating to the Department of Justice.

#### SOME COMMENTS ON THE NATURE OF THIS HEARING

You have asked me to appear before the Subcommittee to testify about the significant problems that may exist in INS, and to talk about ways to remedy those problems, to offer organizational and restructuring alternatives or solutions that might work, and to share with you recommendations that I might give to the new Attorney General. I must confess that I doubt that any person can fully meet such an ambitious request in the few weeks that were available to prepare for this hearing. For an Inspector General, however, the task becomes doubly difficult because the office imposes on the incumbent an obligation to choose one's words carefully, to refrain from groundless speculation, and to demonstrate, with care and professionalism, that there is a basis for each recommendation or conclusion that might be proffered.

At the same time, I appreciate the desire of this Subcommittee for a candid overview and sharing of thoughts about INS that extends beyond the formalities of individual audit and inspection report findings. After all, these reports are already a matter of public record; to some extent, they are yesterday's news. The benefit that today's hearing offers is the opportunity to extend the range of our discussion and consideration beyond the four corners of the various reports that have been written about

the Immigration & Naturalization Service. So, I shall try to meet the spirit of this objective even though my remarks may occasionally have to be qualified.

### SOME BACKGROUND INFORMATION

It may help to start with some very basic information about the Immigration & Naturalization Service. We are talking about an agency that consists of 18,000 employees, a FY 1993 budget of approximately \$1,042,000,000 in appropriated funds and another \$586 million, approximately, that is generated by user fees. The agency is spread among some 36 districts, 20 Border Patrol Sectors, and 14 foreign cities.

The history of INS illuminates some of the problems facing this organization. The agency seems to have been passed around a bit, which undercut the organization's chance to settle on a clear identity or firm vision of what it is about. Consider:

- In 1891, it was created as the Bureau of Immigration in the Treasury Department.
- In 1903, it was shifted to the Department of Commerce and Labor.
- In 1913, it was moved to the Department of Labor.
- In 1940, it was transferred to the Department of Justice.
- Immigration was its original function. Naturalization was added in 1906, taken away in 1913, and returned in 1933.
- And somewhere in the midst of all this, in 1924, the Border Patrol was added to the agency, but structured by sectors that had no geographic or organizational relationship to the rest of the agency.

These are the obvious changes. There were even more difficult currents and tides for INS to navigate: the major statutory revisions and policy swings that seem to be a



constant feature of our immigration system. This tangled matrix does engender some sympathy for the agency.

That sympathy was evidently short-lived. For the fact is that INS has a record of virtually continuous studies, audits, and blue ribbon commissions in recent years. Some of these studies have been brutally negative:

- "Perhaps the most ailing agency in the government," according to a 1984 Heritage Foundation report. "Study after study shows that INS continues to wallow in its backwater of antiquated managerial practices and hopelessly outdated data storage and retrieval equipment." Quoted in letter from Congressman Bruce A. Morrison, Chairman, Subcommittee on Immigration, Refugees, and International Law, House Committee on the Judiciary, to Honorable Richard Thornburgh, Attorney General, dated October 19, 1989.
- INS has "degenerated into a group of segmented autonomous programs," with "weak management systems and inconsistent leadership" and a "chaotic budget development process." GAO Report, "Immigration Management—Strong Leadership and Management Reforms Needed to Address Serious Problems," (GAO GGD-91-28 Jan. 1991).

In a more neutral and studied way, the Department of Justice's annual report under the Federal Managers' Financial Integrity Act (FMFIA) is particularly illuminating. In its report dated December 31, 1992, the Department listed seventeen material weaknesses, almost half of which involved INS.<sup>1/</sup> As you consider the significant problems in INS, you can safely start with this list. For the record then, here are the material weaknesses listed by the Department regarding INS:

1. Automated Accounting and ADP Planning

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<sup>1/</sup> 1992 Report by the Attorney General on Management Controls.

2. Financial Management Training
3. Automated Information Systems Planning
4. Immigration Inspector Training
5. Ineffective Security Program
6. Delivery Bonds
7. Overtime Management - Use of 1931 Act Overtime
8. Procurement Improvements in INS

The first four of the above items are consolidated as a single High Risk Area, which the Department lists as its top priority. In addition, listed as a High Risk Area/Material Nonconformance are three additional items, two of which relate to INS:

- Supervision of Fee Accounts
- Financial Management System

These last two items, the supervision of fee accounts and the financial management system, are particularly troubling because they reflect on INS' ability to manage properly the almost half billion dollars it receives in fee revenues and the one billion dollars it gets from Congress as annual appropriations.

I wanted to spend a moment going over the High Risk Areas and Material Weaknesses because they reflect the results of a structured analysis and evaluative process devised by Congress to test the integrity and reliability of various agency programs. I would not recommend total reliance on that picture, however, and so I have tried to also

respond to your request for an identification of the most significant problems in INS using some of the audits and inspections that my office has conducted.

### SIGNIFICANT PROBLEMS IN INS

In organizing my discussion, I have combined issues into five topics: (1) INS as a Second Class Citizen; (2) INS Management of its Employees; (3) INS Management of its Resources; (4) INS Management of its Laws and Policy; and finally, (5) a brief commentary on the reorganization proposals that have haunted INS for three decades or more.

#### I. INS as a Second Class Citizen

One of the ways my office prepared for this hearing was to gather about 15 of our senior auditors, investigators, and inspectors, all of whom had worked in INS or on INS projects. When we polled the group, we got a unanimous opinion that INS has an "institutional inferiority complex" and an employee morale problem. Several examples of INS employees' perceptions of their plight were given: that INS' vehicle fleet consists of battered clunkers while "everyone" else has new ones; that INS is "low graded," i.e., that an INS investigator can only aspire to a journeyman grade of GS-12, when most investigators in the Department can achieve promotions to GS-13; and that the Department has for years underfunded INS.

I think the morale problem is real. I trust the validity of a consensus coming from this group—they know INS. You can certainly find indications of it in the GAO report (B-239260), and in the following commentary by a former employee:

INS is ridden with "incompetency at all levels of command," has "no national uniformity in the enforcement of law or . . . policy," a "chain of command [that] is illusory," a "total failure to properly employ and supervise staffs," a "major failure to perform INS' basic function of deporting illegal aliens," and "viable budget control [is] an impossibility." Memorandum from Raymond M. Momboisse [former General Counsel at INS] to Mike Lempres, Special Assistant to the Attorney General, dated July 26, 1989.

Nonetheless, I did want to see if there was any truth to the perception that the Department gives INS less than its fair share. I did not believe I could determine whether INS' notoriously aged vehicle fleet was a result of neglect by INS or neglect by the Department of Justice. But it did seem possible to look at grade structure and compare INS' budget share to the total Departmental budget. We found that INS appears to have kept up with or outpaced the Department in its budget growth, principally because it has drawn increasingly on user fees to fund its operations. We also found that it has lower average grades than the bulk of the Department.

#### Appropriated Funds

INS' appropriated funding has grown steadily since FY 1981. However, when the INS budget is compared to the rest of the Department's, INS' growth has not been as great as the rest of the Department. Also, INS' growth since FY 1987 is the result of fees charged for INS services. Figure 1 shows the real growth rate of the INS budget and the rest of the Department. Until 1987, the INS' budget grew at a similar rate as the rest of the Department. When INS fee accounts began in 1987, the growth rate between INS and the Department began to diverge. The INS experienced a greater growth rate



## Immigration and Naturalization Service Budget Real Percent Growth From FY 1981

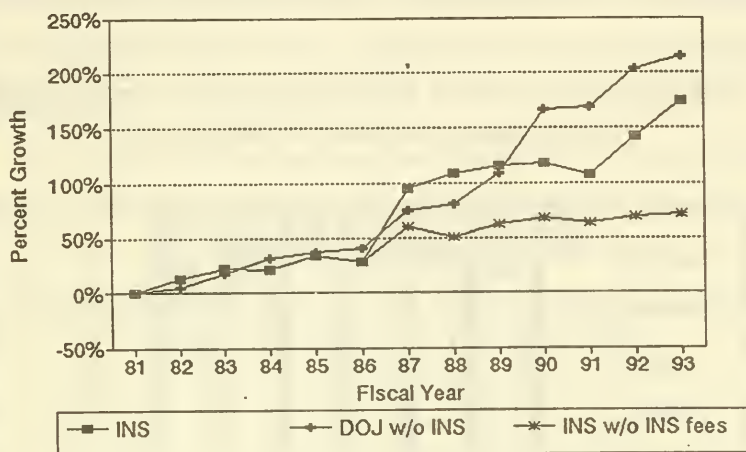


Figure 1

than the rest of the Department for the next three fiscal years. During FYs 1990 and 1991, the INS growth rate fell behind the rest of the Department; since FY 1992 it has picked up again as the difference has been reduced.

Figure 1 also demonstrates that the growth rate in the INS budget is a result of the INS fee accounts. Since FY 1987, the INS budget growth rate without its fee accounts has remained flat while the INS budget growth rate, when the fee accounts are included, has increased significantly.

### INS Fee Accounts

Since FY 1987, the total INS budget has included fees for services<sup>2/</sup>. In FY 1987, INS received \$157 million in fees. In FY 1993, INS projects it will receive \$586

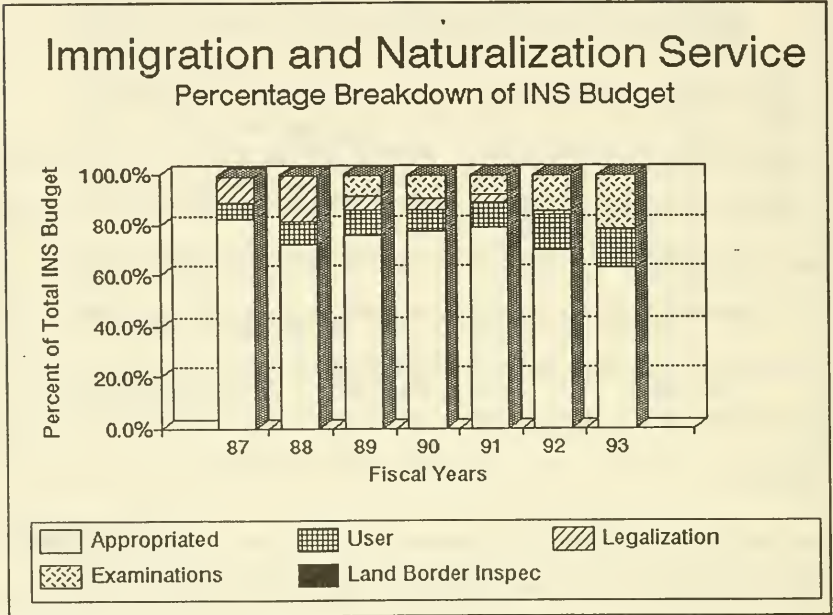


Figure 2

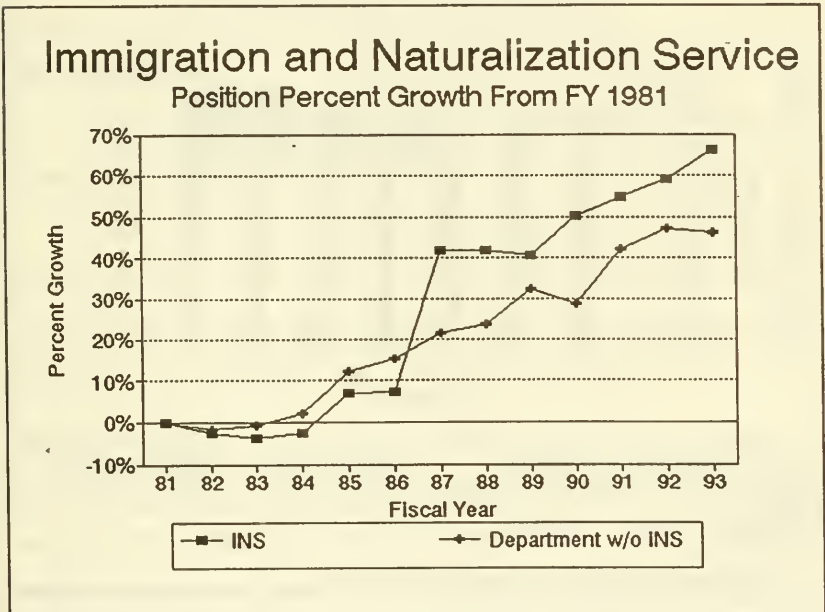
million in fees, a 287 percent increase in six years. Figure 2 shows the composition of the INS budget between FYs 1987 and 1993. Between FY 1988 and 1991, the INS fees were an ever-decreasing percentage of the total budget. However, in FY 1992 the INS

<sup>2/</sup>The INS fee accounts are the User and Legalization fee accounts [1987], the Examinations fee account [1989], and the Land Border Inspections fee account [1991].

fees were significantly revised. Since then, the two principal fee accounts, for the User and Examinations fees, have increased dramatically as a portion of the total INS budget. (The Land Border Inspection fee account totaled only \$2 million in FY 1992, is projected to be \$4 million in FY 1993, and is not a significant portion of the total INS budget.)

### INS Personnel

The number of INS personnel has increased since FY 1981. The greatest increase in INS personnel occurred with the implementation of INS fee accounts. Figure 3 shows



**Figure 3**

the growth in INS positions between FY 1981 and 1986 generally reflected the position

growth rate in the rest of the Department, but INS has consistently exceeded the Department since FY 1987.

Figure 4 shows the breakdown of positions by funding source. Since FY 1990, the increases in INS positions have occurred in the INS fee accounts. The greatest growth in positions has occurred in the Examinations fee account.

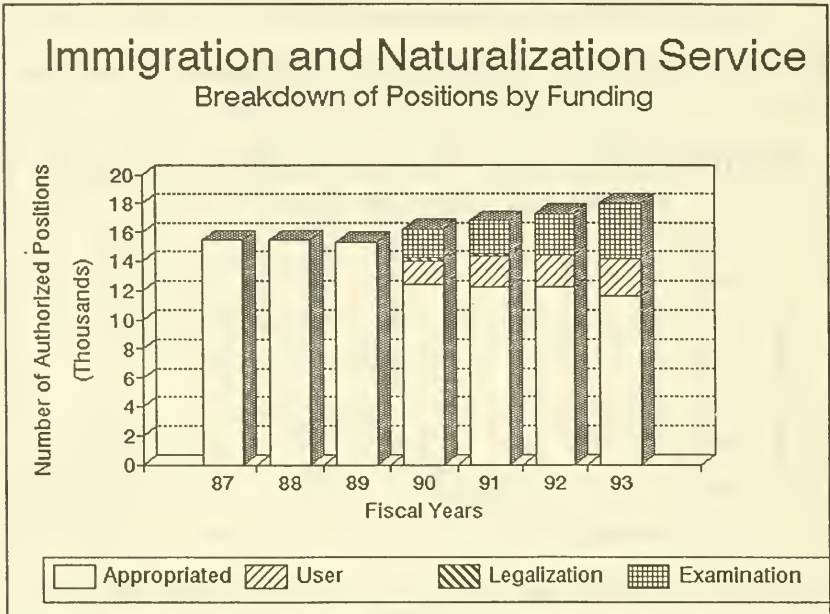


Figure 4

This comparison does not reflect whether INS' budget has kept up with increases in its duties, responsibilities, and workload. But it does show that INS has received at least its aliquot share of the Department's budget, and that it has outpaced the Department



in some instances. In sum, while I cannot determine whether INS got enough money to do its job, it does appear that it got its fair share, and was not required to suffer shortages more than the rest of the Department. That leads us then to the more interesting question of how wisely INS used such resources as it was given.

## II. INS Management of its Employees

Of its total budget, INS spends two-thirds of its appropriated funds for employee salary and benefits.<sup>2/</sup> Its personnel are INS' most important resource. How well it manages them is critical to the smooth operation of the agency.

### INS Personnel Profile

We looked at INS personnel two ways: years of Federal service and grade levels.

#### Years of Service

Figure 5 demonstrates that INS personnel distribution by years of Federal service generally mirrors that of the rest of the Department. INS has a slightly more experienced population than the Department, particularly employees in the 6-25 years experience categories.

#### Grade of Employees

Figure 6 reflects the grade distribution by percentages of the total INS workforce and the rest of the Department. The figure indicates that the INS has roughly a bell-shaped distribution of grades, with the highest percentage at GS-9. INS has

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<sup>2/</sup> Untitled JMD document summarizing current services baseline numbers, using FY 92 actuals.

## Immigration and Naturalization Service Years of Federal Service

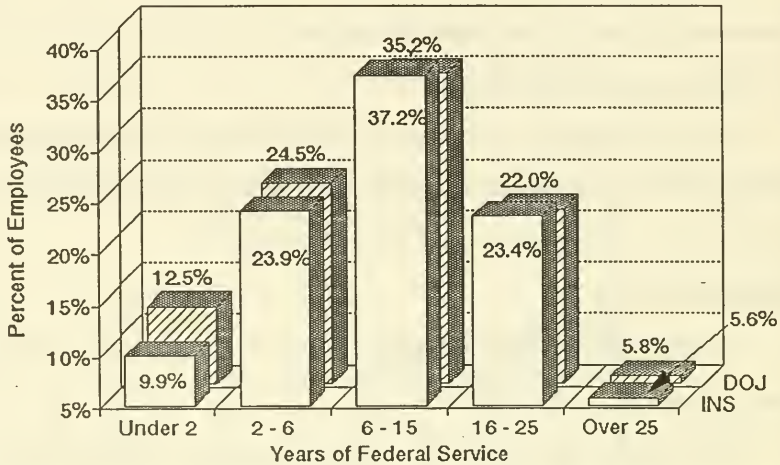


Figure 5

comparatively fewer employees at what seems to be the standard journeyman level for the rest of the Department, GS-13. INS has a greater percentage at the GS-11 and GS-12 levels. Hence, although INS has a more experienced workforce, it is also lower paid than the rest of the Department.<sup>4/</sup>

### INS Employee Corruption

<sup>4/</sup> INS and BOP are tied for the lowest average grade level in the Department, with an 8.8 average grade. But BOP has an average years of service of 8.3 years, while INS' average is 11 years. DOJ Employment Fact Book Fiscal Year 1992, pp. 4, 7.

## Immigration and Naturalization Service Grade of Employees (FY 1992)

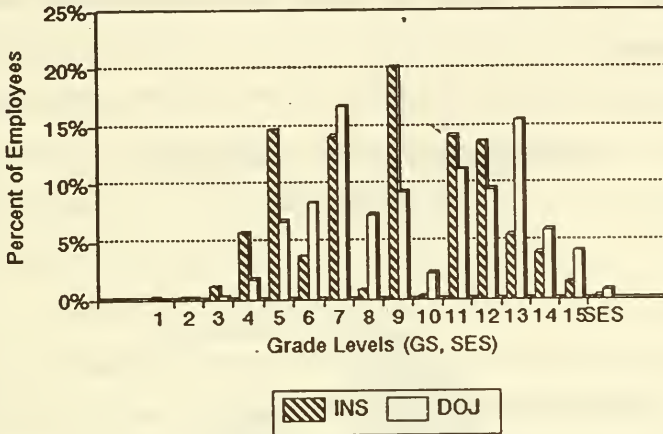


Figure 6

At the outset, I want to emphasize that only a tiny fraction of INS employees are corrupt. But the opportunities for corruption are tremendous. INS employees guard access to the United States—the entry of drugs and aliens across our borders and into the United States. INS employees also have the ability to get and sell another precious commodity: the documentation that will allow an alien to stay in the United States and to get work. The corruption threat to the Department cannot be overemphasized. A border crossing card "sells" for \$325 on the average; a temporary resident permit sells for about \$2,300; and a Green Card sells for an average of \$5,600. Last year, we

successfully concluded cases in which almost \$1 million was paid in an effort to corrupt INS employees. Think about that: \$1 million in bribes, and that is only what we know about and could prove in a court of law. When you have a mix that includes low paid employees, easy money in big sums, and low risks, you have an extraordinarily volatile and risky situation.

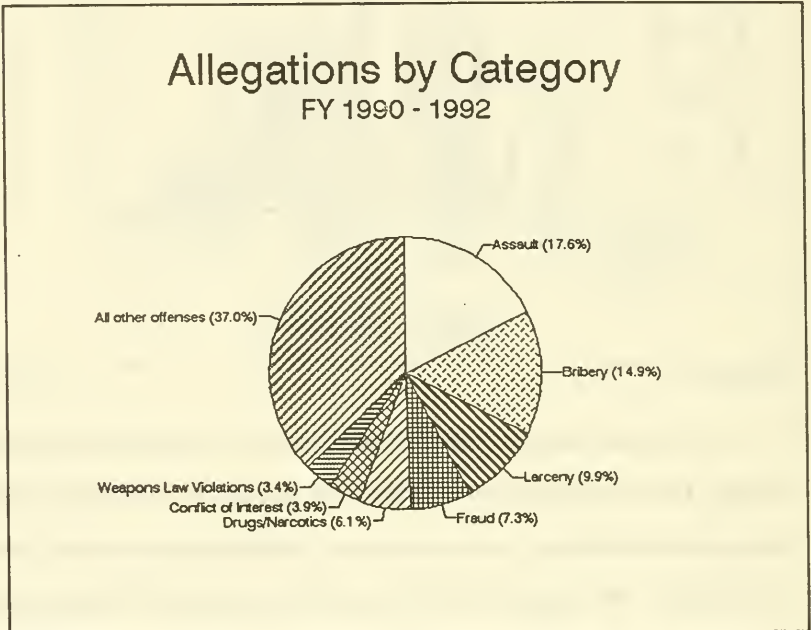


Figure 7

Consequently, it should not come as a surprise that bribery is one of the two most frequent allegations brought against INS (the other being assault). See Figure 7 above.



A year or so ago, my office undertook a study of INS corruption. Our approach was a little different. We gathered up what we knew about corruption in INS from our investigations and audit or inspection reports. That did not help very much. So then we identified former INS employees who had been convicted of taking bribes, and one immigration intermediary who had been convicted of paying bribes, and we went out to interview them. Then we set out to collect as much scientific research and behavioral studies as we could find on the subject of corruption and an individual's decision to become dishonest. In this regard, by the way, we found that not very much had been written on the subject and even less of it was very useful.

One of the more practical writings, however, that summarized the problem and had concrete suggestions on how to deal with it was a study done by the International Association of Chiefs of Police (IACP). It was an especially pleasant surprise to discover further that this useful work had been funded by the Department's own Office of Justice Programs. It is entitled, "Building Integrity and Reducing Drug Corruption in Police Departments" (September 1989), and I recommend it highly.

Distilled to essentials, the IACP study recommended the following:

- Select new hires carefully. Screen them, conduct background checks, use drug tests, psychological testing, even lie detectors to help weed out bad candidates.
- Train them.
- Supervise them.
- Require accountability; discipline for misconduct.

The answers the IACP study provided may appear to be disappointingly simple and obvious. Yet, these answers fit fairly well with what we learned from our interviews and what we knew from our studies of INS: it is often indifferent when it comes to screening its employees and training them, much of their work is unsupervised, and administrative discipline is sometimes haphazard. Fundamentally, what the IACP study seemed to be saying was that sound management techniques with respect to one's employees are also the best anti-corruption measures. Unfortunately, this conclusion compounds INS' problem: not only is it not managing its employees well, but it also, by this neglect, is fostering a climate in which corruption can occur.

#### Employee Screening

Although not alone in the Department of Justice, INS has suffered serious problems with employee background investigations. The problem was first reported as a material weakness in 1989 as a result of a special audit of INS. That audit showed that the INS background security program lacked adequate safeguards to ensure timely adjudications of background results, and proper handling of the clearance waiver process.

The degree and seriousness of INS failings were found during an April 1992 OIG inspection of Justice-wide background security. The figures were dramatic. Of the 5,559 INS employees possessing top secret/secret classifications, 4,205 (76%) of the employees were in violation of Department security background regulations. These regulations require employee reinvestigations at least every 5 years. Of those employees in violation,

55 percent had not been reinvestigated in over 10 years and 35 percent had not been reinvestigated in over 15 years.

Additionally, many of the background investigations which contained derogatory information were never adjudicated. In one INS region alone, over 286 employee background investigations had not been adjudicated and there was derogatory information that required some further explanation or resolution. This included employees in highly sensitive positions, for example:

- An INS law enforcement officer, who tested positive for marijuana at the time he entered on duty in 1986, had an allegation in his investigative report that he had possibly sold drugs. However, he was still employed in 1991 and had served on a drug task force.
- Another INS law enforcement officer was described in his investigative report, dated 1985, as being a "walking time bomb, a pathological liar, someone who lacked judgement and was unfit for law enforcement". He was involved in two firearm incidents before his federal employment; however, he was hired, has achieved career status, and was still employed at the time of our inspection.

### Employee Training

I believe passionately in the value of training, of education. When you hire an employee but do not train him or her, you send a subliminal message that says:

- You are not worth the cost of training.
- How well you do your job is not important enough to me to bother teaching you to do it correctly and efficiently.

Moreover, training provides an opportunity for bonding with coworkers and to instill in the employee some institutional ethic, the traditions that build pride and loyalty, and the standards of conduct expected of them.

Hence, of particular importance to INS' ability to effectively perform its mission is the adequacy of training received by its employees--particularly inspectors, examiners, and enforcement personnel. Due to recent increases in illegal immigration and international terrorist threats, it is imperative that INS personnel are adequately trained to apprehend and properly process illegal entrants. But in our March 1986 audit report on Staffing and Scheduling of Immigration Inspectors at High-Risk Land Ports of Entry in the Immigration and Naturalization Service, a major concern was the use of temporary inspectors with inadequate training and inadequate supervision at high-risk land ports of entry. We observed that in the three regions using these part-time, seasonal, on-call, and intermittent inspectors, the rate of malafide apprehensions declined; in the region which did not use temporary inspectors, the rate of malafide apprehensions remained relatively constant. We recommended that, in order to ensure the effectiveness of the Inspections Program, INS establish policies and procedures regarding the training, use, and supervision of temporary inspectors.

Our February 1989 Special Audit of the Immigration and Naturalization Service found that forty-two percent of immigration inspectors performing inspection duties had not received the 14-week formal training course at Glynco, Georgia. Some (about one third) were temporary employees who would never receive the training; others were



waiting to attend the course, but performing inspection duties in the interim. These untrained, temporary employees were performing the same duties as trained personnel. During our review, we also found inadequacies in the training of accounting personnel, procurement personnel, and security officers. Three years later, in April 1992, we unresolved the 1986 report because INS failed to complete long promised corrective action. While actions have since occurred and the report has once again been resolved, it remains open because INS still has not provided a specific time frame to complete corrective action.

Our September 1991 audit report on Immigration and Naturalization Service Firearms Policy recommended that INS establish criteria to determine when there is a need for full-time sector or district firearms instructors. In many instances the firearms instructors were overburdened by other collateral duties and, as a result, INS employees were not receiving their full firearms training.

We also reviewed all OIG inspection reports to determine where training deficiencies in INS were identified by the Inspections Division. Training deficiencies affecting performance were noted in five INS field offices. In four cases the lack of training related to field procurement activities.<sup>5/</sup> In our report on INS ADJUDICATIONS PROGRAM IN THE EASTERN REGION (FEB. 1990), we found

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<sup>5/</sup> INS BORDER PATROL SECTOR, TUCSON, ARIZ. (MAY 1990); INS EL PASO BORDER PATROL SECTOR (SEPT. 1990); INS NEWARK DISTRICT (SEPT. 1990); INS PORTLAND, MAINE, DISTRICT (SEPT. 1990).

that INS officers performing adjudications activities applied inconsistent criteria in accepting/rejecting submitted information. This was causing unnecessary delays for many applicants undergoing the adjudication process. The report recommended that the officers be trained so as to avoid such inconsistencies.

The Department has listed both inspector training and financial management training as high risk material weaknesses in the 1992 Report by the Attorney General on Management Controls.

### Employee Supervision

INS is an agency which empowers the vast majority of its employees to make critical decisions, but devotes uncertain amounts of time to supervising their work. An inspector at a land port of entry can authorize entry of a truckload of drugs into the United States with the wave of one hand. Most actions by examiners, adjudications personnel, legalization officers, and the like are not reviewed. Decisions to deny an immigration benefit may be reviewed, but a decision to *grant* a benefit rarely is. Virtually any employee can enter INS automated data bases and make changes in its alien record systems; passwords are freely exchanged and rarely updated. Moreover, until very recently, there was virtually no way to track either who entered INS' automated data system or what they did once they got there.<sup>6/</sup> The stamps, ink, and so-called controlled

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<sup>6/</sup> The system modifications came largely because of our prompting after we discovered a clerk who had made something on the order of 1700 unauthorized entries into the Central Index System (the principal alien data base).

certificates often are not secured and are too easily available for mischief.<sup>1/</sup> In our audits, we found numerous errors in the processing and handling of documents.<sup>2/</sup> A common theme was the inadequacy of independent and supervisory reviews. INS laws are complicated and constantly changing, which makes it imperative that these reviews are accomplished. Inadequate supervision, including the failure to perform independent reviews, is also a constant theme throughout the Immigration and Naturalization Service Fee Accounts Annual Financial Statement FY 1991 and Immigration and Naturalization Fee Accounts Management Letter Report FY 1991.

Earlier, I said that the easy money and low risk made corruption more likely in INS. By low risk, I meant the small likelihood of being discovered. The lack of supervision, an essential management *responsibility*, also serves to eliminate one of the traditional deterrents to crime: the fear of being caught.

#### Employee Discipline

We do not have very useful data at this point on how INS disciplines its employees in response to our investigations or those of others.<sup>2/</sup> There is a persistent belief among

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<sup>1/</sup> See Special Audit of the Immigration and Naturalization Service, February 1989; Security of Controlled Documents and Stamps in the INS, July 1991.

<sup>2/</sup> Controls Over Certificates of Naturalization and Citizenship in the Immigration and Naturalization Service (February 1990), Special Audit of the Immigration and Naturalization Service (February 1989), and Audit Report of I-551 Card Processing Controls of the Immigration and Naturalization Service (1988).

<sup>2/</sup> We are revising our case tracking system and procedures to enhance the collection of this data, though traditionally it has been both difficult to obtain and to analyze. We also  
(continued...)

those of our staff with experience in the area that INS' treatment of misconduct is spotty. Whether action is taken, and the severity of the punishment, if any, seems to be uneven and sometimes happenstance. This tentative premise can only be supported anecdotally, but the anecdotes seem to be pretty compelling. Consider:

- In 1990, the Office of the Inspector General received an allegation that an INS District Director used his influence to accelerate the granting of an INS benefit for a family member. This was reviewed by the OIG and while no criminal misconduct was established, some possible poor judgment was detected. This matter was referred to INS by the OIG. Shortly after this investigation, one of the original complainants in the investigation claimed she was physically intimidated by the District Director and a second investigation was commenced, substantiated and forwarded to INS. In February of this year, INS began to evaluate these complaints for disciplinary action.
- An allegation of misconduct against an Immigration Officer was investigated by the OIG, was substantiated and sent to INS headquarters for transmittal to the deciding official. It took nine months for the report to reach the official. In the meantime, he had promoted the individual to a higher position of trust. No action was taken against the employee.
- An INS Special Agent was discovered to be exceeding his authority by attempting to enforce local laws, including the traffic code. After an attempt to fire him, he was allowed to change jobs and become an Immigration Inspector. After being promoted to a Senior Inspector (a law enforcement position) he was again discovered making traffic stops in uniform and while armed. The OIG advised the District of the new allegation, but the agency decided to keep the employee in his position because he possessed a needed language skill.
- An INS inspector was arrested by the local police as she left a crack house and was found to be in possession of drug paraphernalia. She was

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<sup>2/</sup>(...continued)

have under consideration for next year's Audit/Inspection Workplan a project that would delve into disciplinary actions initiated by INS.



reassigned to the District Office while INS decided what to do with her. During this time she was assigned to the unit that approved the issuance of Green Cards, which she immediately began selling to support her drug habit and did this for over a year until the OIG arrested her.

- An INS Special agent convicted in local court for a felony (unlawful imprisonment) has been continued on the payroll for over 18 months.

### Related Employee Performance

The preceding discussion really focused on INS employee corruption. It is not a great leap of logic, however, to find a comparable relevance to more fundamental performance problems, such as problems with physical abuse along the border and neglect of duties resulting in application processing backlogs of sometimes as much as a year or more.<sup>10/</sup>

Prompt, certain discipline is a deterrent. Even handed discipline connotes fairness on management's part and enhances employee expectations of equitable treatment, from which is derived institutional loyalty. Another factor that we believe enhances employee's dedication to an institution is the level of confidence that employee has in the rationality of management, its purposefulness, and the care with which it protects its resources and uses them wisely, since, after all, the employee is one such resource.

### III. INS Management of its Resources

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<sup>10/</sup> My prepared statement has not touched on the allegations of violence lodged against the Border Patrol. Although our inspection into INS Firearms Policy was specifically prompted by allegations of Border Patrol abuse, individual allegations of physical abuse are treated as civil rights cases, assigned by Department of Justice policy to the Criminal Section of the Civil Rights Division and investigated by the FBI.

This is potentially a huge topic. Essential to INS' ability to accomplish its mission is the appropriate allocation of resources between offices and functions. In our February 1989 Special Audit of the Immigration and Naturalization Service, we determined that INS was allocating investigative resources based on historical staffing patterns, not workload, resulting in poorly balanced distributions. Some geographic areas ended up with a high concentration of investigative resources while others had virtually none.

A June 1992 DOJ Management and Planning Staff study, Administrative Services in the Immigration and Naturalization Service, concluded that INS is significantly understaffed in the administrative area. This understaffing negatively impacts the performance of administrative functions necessary to support INS programs. It also adversely affects any attempts to reform administrative shortcomings in areas such as financial management and information management. In some districts, the understaffing is so critical that it has been necessary to temporarily reassign program personnel to perform these jobs. The shortage then affects program performance, increasing the backlogs of applications and data input. The report recommended a minimum of 217 new administrative positions and the use of staffing guidelines by INS.<sup>11/</sup>

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<sup>11/</sup> During our audit of the FY 1989 Immigration and Naturalization Service Financial Closeout, we also reviewed the allocation of resources to accounting offices. We found that there had been no reallocation of resources as workloads changed. Workloads at some offices had increased tremendously without a corresponding increase in staff to handle the workload; these offices were unable to handle current workloads. Offices with static workloads had maintained staffing levels and were able to handle current workloads. We recommended that INS review its financial and accounting staffing levels (continued...)

A major cause of this problem is the lack of reliable workload or performance data that can be used to accurately allocate resources at INS. The Management and Planning Study noted that "the data generated by the INS principal statistical reporting system are widely recognized to be flawed."

Another related problem is INS' management of overtime in the Inspections Program. While INS has made substantial improvements in this area, our audit report issued in January 1992, Overtime in the Immigration and Naturalization Service Inspections Program, advised that further savings could be realized if INS would request repeal of the 1931 Act overtime law, as we recommended. While INS was unsuccessful in a 1992 attempt to prohibit the payment of 1931 Act overtime, the Conference Report for the Department's FY 93 Appropriation encouraged the Department to propose comprehensive legislation to correct any pay disparities involving INS inspectors. This area has an inherently high potential for abuse—which we documented in audit

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<sup>11</sup>(...continued)

to determine the appropriate allocation of resources. However, subsequent audits have revealed that many of the problems attributable to inadequate staff—including backlogs in imputing data and performing reconciliations and inadequate reviews and supervision--still occur. (CFO audit, Pages 30-36).

reports.<sup>12/</sup> These abuses have also been noted in various Inspections Division reviews of district offices and General Accounting Office audit reports.

### Financial Management

Longstanding problems with its outmoded and inefficient financial management system deny INS management the use of current and accurate information. The result contributes to ineffective management of the agency. Without accurate information, INS is unable to maximize the use of funds available. In past years, INS has been forced to cancel contracts and procurement actions, often severely impacting program performance.

In our February 1989 Special Audit of the Immigration and Naturalization Service, we first performed a review of INS' overall financial management. Our review determined that INS had lost such control of its FY 1988 status that we could not determine, over four months after the fiscal year had ended, if the agency was in violation of the Anti-Deficiency Act. Numerous problems were cited, including an inadequate and outmoded accounting system, ineffective fund control, inaccurate reports used by managers, backlogs, and staffing and training problems with accounting personnel.

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<sup>12/</sup> Staffing and Scheduling of Immigration Inspectors at High-Risk Land Ports of Entry in the Immigration and Naturalization Service (March 1986); Reimbursable Overtime Billing System in the Western Region of the Immigration and Naturalization Service (November 1986); Audit Report on the Immigration and Naturalization Service's Inspections Program at Seaports of Entry (September 1988); Special Audit of the Immigration and Naturalization Service (March 1989); Overtime in the Immigration and Naturalization Service Inspections Program (January 1992).



Because of the concerns described above, we returned to INS to do a more focused audit, entitled FY 1989 Immigration and Naturalization Service Financial Closeout (February 1991). As a result of that work, we must reemphasize that INS management has neither complete nor current and accurate data with which to manage the agency and report its year-end results. Information reported to Treasury and Office of Management and Budget on year-end reports was inaccurate and not fully supported by available accounting data. Thus, the information used by management in its decision making, including spending on procurements, training, hiring, travel, and overtime was also flawed. In the report, problems were cited with backlogs, reconciliations, and errors in the financial records.

A GAO report (AFMD-91-20), issued in January 1991, also concluded that "INS does not have fiscal accountability over its resources." GAO cited INS' outmoded accounting system, weak internal controls, and lack of management emphasis on financial management as the greatest contributing factors to the problem.

The FY 1991 financial statements of the INS Fee Accounts were first audited under the requirements of the Chief Financial Officers Act of 1990 in FY 1992. Due to the status of INS' accounting records (Immigration and Naturalization Service Fee Accounts Annual Financial Statement FY 1991), the independent public accountants were forced to disclaim an opinion on the principal financial statements. Once again, the most prevalent problems encountered by the auditors were backlogs, reconciliations, and material internal control weaknesses. The auditors also reported that the Fee Accounts

were not in compliance with either the Budget and Accounting Procedures Act of 1950 or Title 2 of the General Accounting Office's Policy and Procedure Manual for Guidance of Federal Agencies; they could not determine if INS was in compliance with the Anti-Deficiency Act. The financial management system, automated accounting and automated data processing planning, and financial management training were all listed as material issues under High Risk Area 1 of the Department's 1992 Report by the Attorney General on Management Controls.

#### INS User Fees

Over the years, INS has failed to collect millions of dollars in fees that should have been collected. We recently issued a draft audit report, entitled Immigration Services and Special Benefits for Which Fees Have Not Been Established, in which we estimate at least \$170 million in additional fees are not collected annually because INS does not fully exercise its authority for establishing fees. INS still provides some services free of charge; in other instances individuals are exempted from existing fees.

In December 1987, we issued an Audit Report on Adjudication and Naturalization Fees in which we also concluded that INS could increase its collections by performing annual cost reviews of fees charged, using current and complete cost data, and charging for all possible services. A December 1988 Audit Report on Immigration and Naturalization Service Collection of Fees identified internal control weaknesses in the collection of fees; these weaknesses could result in INS not collecting all the amounts due. Our December 1992 audit report on Controls Over Established User Fee Accounts in the Immigration and Naturalization Service determined that only valid program costs

were charged to the fee accounts. However, we also found that programs were not being reimbursed from the fee accounts for the full amount of direct and indirect costs incurred; instead, appropriated funds are being used to subsidize fee related programs. Since an adequate cost accounting system does not exist at INS to properly accumulate costs, INS is unable to accurately establish fees. We estimate that INS should collect at least an additional \$114.8 million in fees annually to cover its program costs.

The independent public accountants contracted to perform the financial statement audit of the INS Fee Accounts, as required by the Chief Financial Officers Act of 1990, disclaimed an opinion on the principal statements due to the status of the accounting records. The auditors also observed that there is no system in place to verify that users actually pay for services provided. Additionally, controls to ensure that all collections are actually deposited to the fee accounts are lacking. In a related assessment, the Department's 1992 Report by the Attorney General on Management Controls included the supervision of fee accounts as a material issue in High Risk Area 1.

### Information Management

INS' obligations for information resources totalled over \$300 million for FYs 1989 through 1991, with an additional \$128 million planned for FY 1993. How information resources—hardware, software, data, and people—are acquired and managed is critical to INS' mission.

The Immigration and Naturalization Service has over 100 unique automated systems supporting every aspect of INS' mission. These systems support administration, financial, enforcement, records management, examinations and the inspections functions.

Many of the existing and the new systems being considered could be duplicative. For example, the Alien File Accountability and Control System (AFACS), the Regional Alien File Accountability and Control System (RAFACS), and the Central Index System (CIS) are all indexes providing the physical location of an alien physical file folder.

#### ADP Planning

A DOJ Special Audit of the Immigration and Naturalization Service (February 1989) stated that INS had not adequately defined its automated information systems needs even though it had been working since 1977 to automate its mission and administrative systems.

A GAO report (IMTEC-90-75) issued in September 1990 stated that, because of the lack of resources and planning for information systems, INS' managers and field officials did not have information which was adequate, reliable, and timely enough to effectively carry out the Service's mission.

A report by the Surveys and Investigations Staff to the Committee on Appropriations, U.S. House of Representatives, "Organization, Management, and Operation of the Immigration and Naturalization Service of the Department of Justice," dated April 1991, stated that: in the late 1970s, INS was still using manual information systems; in the 1980s, although INS determined its information needs and set forth a long-range implementation plan, new management disregarded the plan; in 1986, procurement irregularities were uncovered and INS was highly criticized for its lack of planning; and in 1991, INS did not have the information needed to properly manage the Service because clear missions and priorities had still not been determined.



The Department's 1992 Report by the Attorney General on Management Controls, issued to the President, reported INS' ADP Planning as a High Risk Area/Material Weakness.

#### ADP Security

A DOJ audit report on The Operational Activities Special Information System - OASIS (December 1987) stated that there was an absence of centralized administrative control exercised over the assignment and use of user identifications and passwords within INS. These deficiencies made it difficult for INS to establish individual accountability for unauthorized access to INS' systems. In addition, the report stated that there was no assurance that INS' ADP activities were being performed and operated in a secure environment and that sensitive applications were adequately safeguarded (summarized in Special Audit Report at page 16).

A DOJ Special Audit of the Immigration and Naturalization Service (February 1989) stated that automated information system security had significant weaknesses: computer terminals were located in open areas with easy access by unauthorized individuals; password integrity had been compromised because passwords were openly shared among employees; and no risk analysis or contingency plans had been developed for the Washington, D.C. or San Diego data centers.

An OIG draft audit report, Data Base Access Controls at the INS (February 1993), disclosed vulnerabilities in certain computer security control areas. The audit noted that INS' data are vulnerable to either accidental or intentional destruction, alteration,

disclosure, or unauthorized use. During the course of the audit, INS started some security measures that should provide greater control over vulnerable areas.

The Department's 1992 Report by the Attorney General on Management Controls, issued to the President, stated that INS' sensitive information was at undue risk because of INS' weakened security posture.

### Detention Facilities

We have found a number of factors contribute to a recurring condition: the under-utilization of available bed space. These include, local district policies and practices, costs associated with transferring aliens between detention facilities, lack of transportation resources, problems in legal jurisdiction and legal services, limited staffing of Detention & Deportation rosters, and inadequate information about available space.

While certain factors mitigate INS responsibility, other factors underscore the lack of proper INS management. The following inspection reports provide some examples which illustrate this problem:

- INS MIAMI DISTRICT OFFICE (MANAGEMENT ASSISTANCE REVIEW, FEB.1990) - This inspection revealed that the INS Detention facility at Miami (Krome, Fla.) had a capacity for 1,000 detainees but was operating at less than 55% of bed capacity due, in major part, to INS staff shortages. At that time, INS HQ Detention and Deportation officials were proposing acquisition (without competing bids) of a 300-400 bed contract facility at a cost of \$10,000,000. They were proposing this action because of their assessment of "the immediate need of detention space in the Miami, Fla. area." The inspection review pointed out that full utilization of the Krome facility, including cost for additional staffing, would be \$3.3 million cheaper in annual operating costs than the proposed contract facility.
- INS PHOENIX DISTRICT (FEB. 1991) - The inspection disclosed that a \$2.5 million dormitory complex used to house aliens at the Service Processing Center (SPC) in Florence, Ariz. remained unoccupied long after

its completion due to INS staffing shortages. As a result, INS District officials housed aliens in non-INS facilities at a cost estimated, at that time, to be in excess of \$350,000. Additionally, INS was contemplating further expansion of this SPC without assurance that staff would be available for operation when the facility was completed.

- INSPECTION OF DETENTION FACILITIES IN THE INS (JAN. 1993)  
This report disclosed that INS paid \$28 million in 1991 for non-INS detention facilities even though considerable bed space was available at some SPCs. INS management inefficiency appeared to be contributing to the SPC under-utilization. Additionally, INS officials were planning to expand non-INS facilities and also expand SPCs including the one in EL Paso, Texas, even though it is currently operating below capacity.

In sum, the evidence over the past three years of audit reports from my office, corroborated by near-identical conclusions in GAO reports, and supported by other commentaries on INS, such as the Surveys and Investigations Staff of the House Appropriations Committee, leads to the conclusion that INS does not have the wherewithal to manage itself wisely. It lacks methods to collect information, to sort it, to analyze it, to verify it, and it lacks the coordinative and planning capabilities to use the information, even if available. It lacks the infrastructure necessary to support sound administration, budget planning and execution, information management, detention space forecasting, and the like. I think the single most important piece of advice that anyone could give to Congress, to the new Attorney General, or to the next Commissioner of INS would be that, whatever the temptations, the shortfalls elsewhere, the pressures of the moment—do not neglect funding and nurturing of the support infrastructure. We must invest for the future; we must invest if INS is to be rejuvenated.

#### IV. INS Management of its Laws and Policy

In its Immigration Management audit report, GAO was particularly critical of the lack of clear policy direction from INS headquarters. I also recall reading about a study by the Rand Corporation, in which it was disclosed that the average amount for an employer sanction differed widely depending on which INS region enforced the violation. Finally, the recent news reports describing how any alien claiming asylum can obtain entry into the United States *and* a work permit, regardless of how patently transparent the claim, suggests that our Nation's immigration law and policy could use some Spring cleaning.

I will be brief in discussing this proposal. I know it sounds like a very trite panacea; I do not intend it so. My thought is this. Our immigration laws and policies have become as complicated as our tax code. Such complexities work an injustice to aliens, to whom English is not a native tongue, for how can they know that they have secured the rights for which they may be eligible. It puts a heavy strain on INS employees as well, for it must be very difficult for these low-graded employees to keep up with the changing vagaries of the laws.

Therefore, I urge consideration of an effort to reform and simplify our immigration law in order to achieve three purposes: First, so aliens will have a better chance of securing what rights or entitlements as they may be eligible for; and, second, to give INS employees a simpler matrix of rules because doing so will enable them to process benefit applications in less time and will increase the likelihood that the processing will be performed with uniformity and fairness. And third, to come up with firmer ways of



dealing with illegal entrants that will preclude them from remaining in the United States simply by default.

#### V. INS Reorganization Proposals

Much has been written about the so-called schizophrenic persona of INS—that it suffers from some dysfunctional marriage of two incompatible responsibilities: to keep some aliens out of the country (the "enforcement" role), but to serve and assist other aliens to enter and to obtain residency and citizenship (the "service" role). The correspondent role that the United States Customs Service fills has also been noted.

Consequently, it seems that there always has been in circulation one or another proposal to reorganize or restructure both the agencies and their responsibilities. The most recent study, a draft report from the General Accounting Office, was performed at the request of former Senator Bentsen last year. It was entitled, "Customs Service and INS - Dual Management Structure for Border Inspections Should Be Ended," (B-251101).

In it GAO reported:

- "Coordination problems at the land border crossings will not be resolved until the current dual management structure is ended."
- A panel of distinguished public officials "reached consensus" that consolidation "represented the most viable option."
- Research showed "no broad scale reorganization has ever been approved by Congress because of opposition from agencies and departments that stand to lose jurisdiction, from congressional committees that would be similarly affected, and from agency personnel and private sector organizations that see their interests adversely affected."
- GAO did *not* recommend moving Border Patrol and the INS inspection function to Customs. Instead, it suggested separating INS from DOJ and

Customs from Treasury, and joining the two as a separate, independent "Border Management Agency."

I do not think I should comment on this proposal specifically. I have not studied it, and the Department deserves a chance to address it without having to deal with some premature opinion from me. I would suggest that we be wary about such proposals on a more general level, however, for a couple of reasons.

First, many organizations appear to have multiple and even contradictory duties. IRS must aid and advise the taxpayer, while hunting out and prosecuting the tax cheat. The Food & Drug Administration must regulate the industry, encourage new developments, and yet guard against unsafe, inadequately tested medicines. Throughout the Government you will find agencies that must simultaneously be both cheerleader and policeman for some industry or constituency. Sound management practices and structures should support one goal, or another, or both. If I have a solid payroll system, it shouldn't matter whether I use it to pay a border patrol agent or an immigration examiner. If I have a "deplorable"<sup>12/</sup> payroll system, it is not going to get better by separating the two employees into different organizations. Hence, I think it important to stay focused on what might be accomplished and what might not change at all before beginning a reorganization.

My second observation about a realignment of INS functions is that we could learn something from history. None of these proposals has been adopted thus far. Something keeps getting in the way. We can waste an awful lot of energy trying to implement a

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<sup>12/</sup> GAO's word, see "Immigration Management" B-239260, chapter 5.

reorganization that should be spent on more basic improvements. These proposals are expensive, they distract employees from virtually any other work, and the marriage of new structures, jobs, personnel, equipment, and the like, requires that the underlying responsibilities, duties, and functions be deferred. Prudence would suggest that one question whether INS can afford this plan right now.

### CONCLUSION

That concludes my report and prepared remarks Mr. Chairman. I have discussed a number of studies that have been critical of INS. I think we ought to remember that there are legions of employees out there who are fighting to stem an enormously strong tide of humanity that desperately wants to reach our Nation's shores, and that these INS employees are working bravely and in difficult conditions. They deserve our support; we must give them the tools with which to do their jobs, and we must give them the attention that this difficult task requires. I thank you for this Subcommittee's interest in that challenge, and would be pleased to attempt to answer any questions you might have.

## APPENDIX 2.—STATEMENT OF REV. ANTHONY HEFNER, CYNTHIA RODRIGUEZ, BEATRICE HUERTA, AND JOVITA URRUTIA

Our names are Anthony Hefner, Cynthia Rodriguez, Beatrice Huerta and Jovita Urrutia. Collectively, we worked for 15 1/2 years for Burns International Security Firm and as employees of Burns, worked in the INS Detention Facility in Los Fresnos, Texas from March 1983 to June 1991. As security guards of Burns International, we were assigned to the INS Detention Facility at Los Fresnos, Texas and directly under the supervision of the INS and its administration at the detention center; we worked alongside INS employees and answered to INS supervisors.

We would like to jointly submit this testimony of our experiences in the hope that this information will contribute the subcommittee efforts in addressing problems of personnel and resource management of the Immigration and Naturalization Service. In particular, we hope that our testimony may provide the subcommittee with guidance to establish mechanisms to safeguard the constitutional rights, personal safety and human dignity of both employees and persons affected by immigration law enforcement operations.

Our efforts to address misconduct at the INS detention facility began in February, 1990 when Rev. Anthony Hefner issued a complaint to the Inspector General's Office in McAllen, Texas regarding the theft of government property. In March, 1990, Rev. Hefner again sent a complaint to the OIG regarding the transfer of a young Salvadoran girl from a children's detention center to Port Isabel to perform personal duties, like dancing the Lambada, for INS officials. Then, on September 24, 1990, Cynthia Rodriguez, Jovita Urrutia, and several other women sent letters to the U.S. Equal Employment Opportunity Commission in San Antonio complaining of the loss of jobs with the new security firm United International Investigative Services for having complained to both IS and Burns supervisors about the sexual harassment they were subjected to and their knowledge of the sexual abuse of women detainees. It was public disclosure of these incidents that led to a two week investigation by the Office of the Inspector General. Attached is an article from the Valley Morning Star that details such incidents.

The investigation of the Office of the Inspector General took two weeks and finally ended in concluding that our allegations were unsubstantiated. Attached is an article from the Valley Morning Star on this investigation. However, in our view, the investigation conducted by the Office of the Inspector General



was intentionally obstructed by officials of the INS, Burns and United International. In fact, because of this obstruction the OIG did not conduct a thorough investigation. The following are examples:

- 1) Several guards were specifically warned by superiors of loss of their jobs if they spoke to any investigator at all. Their names Beatrice Huerta, Frances Carmona, Emily Davis, and Jaime Pena. Attached are affidavits attesting to these threats.
- 2) Several detainees were not guaranteed confidentiality by the OIG investigators and thereof, they refused to come forward. Their testimony would have provided the OIG with examples of the specific acts of sexual misconduct that they were subjected to at the hands of both INS and private security employees at the detention camp.
- 3) Several employees and detainees were not interviewed by the OIG investigators at all even though their names were provided. All of these were direct witnesses to the sexual misconduct occurring or in the case of female guards, were subjected themselves to sexual harassment and abuse by INS and private security officials.

The failure of the Department of Justice/INS internal system for the investigation of complaints of misconduct to sustain these allegations and to discipline the employees involved have led us to initiate court proceedings against the current private security firm United International for "blacklisting" all of us who took the steps to put a stop to this sexual abuse and harassment. Its failure has also obligated us to raise this issue in all and any public form. Several national organizations have asked the new Attorney General Janet Reno to re-examine our case and to re-initiate the investigation. Already, the INS Audit division has responded to one organization that this request is inappropriate because INS employees were not involved. Yet this is not the case; INS employees, including the Director of the Camp, now the Assistant INS District Director of Detention, were engaged in sexual abuse of detainees and harassment of female guards. And even in incidents where INS employees were not involved, INS still has the legal responsibility for the conduct of the employees it contracts through private firms, especially if these employees were under their direction at every shift.

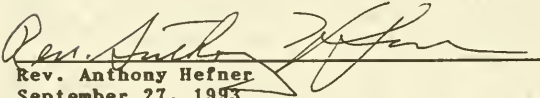
With our case, we have adequately documented government's inability to police itself, its unwillingness to investigate wrongdoing and if identified, its reluctance to correct misconduct of its employees. For these reasons, we believe that there are two courses of actions that this subcommittee can take:

- a) establish an independent review commission to investigate complaints of misconduct and ensure a fair and thorough investigation of these.

b) extend the protections of the Whistleblower's Act to any personnel working for a contractor on government facilities and operations.

In conclusion, we will gladly explore additional documentation with the subcommittee. We can be reached at (210) 399-5171 or (210) 831-5950; or write to Rev. Anthony L. Hefner, Route 6 Box 96-H, San Benito, Texas 78586.

We willingly share these experiences in the expectation that effective mechanisms be adopted to increase the accountability of actions of immigration authorities; that these mechanisms protect both employees who act properly and detainees in their care; that the rights of all persons be safeguarded in the process of enforcing the nation's immigration laws.



Rev. Anthony Hefner  
September 27, 1993

APPENDIX 3.—LETTER DATED OCTOBER 7, 1993, FROM BARBARA HINES, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW OF TEXAS, IMMIGRANT AND REFUGEE RIGHTS PROJECT



LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW  
OF TEXAS  
IMMIGRANT AND REFUGEE RIGHTS PROJECT

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NOV 8 1993

ROBERT F. GREENBLUM  
Staff Attorney

IMMIGRATION

October 7, 1993

The Honorable Romano Mazzoli  
Subcommittee on International Law  
Immigration and Refugees  
B-370-B Rayburn House Office Building  
Washington, DC 20515

NOV 08 1993

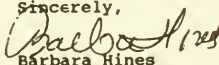
Dear Representative:

I respectfully request that the enclosed testimony be made part of the public record of the Subcommittee's hearing previously held on September 29, 1993.

The inclusion of this testimony will contribute to the understanding of the problems faced by our community when federal immigration law enforcement officers abuse their authority and few, if any, remedies are available to the public.

Thank you for your attention.

Sincerely,

  
Barbara Hines

BH/jc  
Encl.

cc: Xavier Becerra

WRITTEN TESTIMONY OF BARBARA HINES

My name is Barbara Hines. I am the Director of the Lawyers' Committee for Civil Rights Under Law of Texas, Immigrant and Refugee Rights Project, located in San Antonio, Texas. The Texas Lawyers' Committee is affiliated with the National Lawyers' Committee for Civil Rights Under Law, which was established at the request of President John F. Kennedy, to involve the private bar in legal services to victims of racial discrimination. The Immigrant and Refugee Rights Project of Texas Lawyers' Committee was founded two years ago, to address the unserved legal needs of U.S. citizens, lawful permanent residents, refugees and other immigrants, in the face of endemic violations by the Immigration and Naturalization Patrol.

In addition to my current employment with the Immigrant and Refugee Rights Project, I have practiced in Texas in the field of immigration law for more than eighteen years. Thus, I have considerable expertise concerning immigration and border related issues.

The Immigrant and Refugee Rights Project of the Texas Lawyers' Committee strongly supports H.B. 2119. The passage of this bill would provide a needed oversight to the U.S. Border Patrol, which currently ignores citizen complaints, and demonstrates a disregard for the constitutional and civil rights of U.S. citizens, permanent residents and aliens.

I am lead counsel in the case of Murillo v. Musegades, 809 F. Supp. 487 (W.D. Tex 1992), in which the federal court issued a preliminary injunction against the U.S. Border Patrol/INS for repeated and flagrant Fourth Amendment violations. The plaintiffs in this case are Hispanic students, teachers, and residents of the Bowie High School District, a predominately Hispanic, neighborhood in close proximity to the international border in El Paso, Texas.

Students and the Bowie High School principal complained to the then Border Patrol Sector Chief, Dale Musegades, of high speed chases across the school grounds, false arrests of U.S. citizen students on their way to school, excessive force and verbal abuse against students who declined to answer repeated Border Patrol interrogations as to citizenship. Even more egregiously, Border Patrol agents pulled a gun on the Bowie High School football coach, en route to a football game with two team members. Former Chief Musegades publicly stated in the press that the Border Patrol's actions were justified and that his agents would continue to police the Bowie High School campus.

Last fall Judge Bunton enjoined the Border Patrol from further constitutional violations and made numerous factual findings and legal conclusions which demonstrate the need for passage of H.R. 2119. (Decision attached as Exhibit 1) as follows:

" Victims of abuse by the El Paso Patrol fail to



report the abuse because (1) victims fear retaliation by the INS and by the El Paso Border Patrol in the form of deportation, criminal charges, or loss of legal immigration status for themselves or family members; (2) victims begrudgingly accept this type of abusive law enforcement action as a way of life; (3) victims have a sense of futility in filing grievances as victims are rarely, if ever, informed of the disposition of their complaints; and (4) victims believe the complaints will neither be rigorously investigated nor officers duly disciplined."

Unfortunately, the cavalier response of the El Paso Border Patrol to community complaints is not an isolated incident. The case against U.S. Border Patrol agent Bill Rowe, former officer in charge of the Lubbock, Texas, Border Patrol station is also illustrative of the problems caused by lack of oversight of the agency.

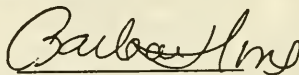
In 1981 a series of complaints were submitted to the INS Regional Commissioner, charging Mr. Rowe with abuse toward detained aliens as well as lawyers and other individuals seeking to help detained relatives and clients. It was alleged in several affidavits that Mr. Rowe would coerce aliens to accept voluntary departure from the United States, and would verbally abuse any attorney or relative who sought to assist the alien.

Subsequently, Mr. Rowe became the subject of three lawsuits centered in north Texas. In one, Ortega v. Rowe, 796 F.2d 765 (5th Cir. 1986), a class of alien detainees challenged the inhumane conditions of detention they were subjected to while incarcerated by officers of the Lubbock Border Patrol Station. In Manuel Zavala v. U.S., Northern District of Texas, 1984, Mr. Zavala, a detainee who had fallen from a bunk bed while jailed by officers of the Lubbock station, charged the Border Patrol with negligence in failing to provide medical care after he lay over 24 hours on the floor of his cell with a broken neck, which resulted in Mr. Zavala becoming a paraplegic. The INS settled the case with Mr. Zavala for an undisclosed sum of money.

In the third case, Sanchez v. Rowe, 651 F. Supp. 571 (N.D.Tx. 1986), the court found that Mr. Rowe had beaten Mr. Sanchez while in his custody because he had refused to acquiesce to a voluntary departure. Mr. Rowe took Mr. Sanchez alone in a patrol car on a ride through lonely roads near Wichita Falls, Texas, and stopped intermittently to beat him. The court awarded damages to Mr. Sanchez.

Those who complained to the regional Commissioner in 1981 concerning Mr. Rowe's conduct never received a response from the INS. It was apparent that the INS never took any action to correct Mr. Rowe's behavior. Hundreds of thousands of tax dollars were spent in defense of Mr. Rowe and the officers under his command, and in payment of damages to the victims of Mr. Rowe's abuse.

In conclusion, on behalf of the Texas Lawyers' Committee, Immigrant and Refugee Rights Project, and as a private attorney, I urge you and the Subcommittee on International Law, Immigration and Refugee to support H.R. 2119. I thank you for the opportunity to provide this testimony.

A handwritten signature in cursive script, appearing to read "Barbara Hines", written in dark ink.

BARBARA HINES

October 7, 1993

**MURILLO v. MUSEGADES**

Cite as 809 F.Supp. 487 (W.D.Tex. 1992)

**Benjamin MURILLO, Isaac Villalva, David Renteria, Juan Carlos Jacquez, Hector Ortiz, Albert Vasquez, and Grace Hernandez, Individually, and on Behalf of All Others Similarly Situated, Plaintiffs,**

v.

**Dale MUSEGADES, Border Patrol Sector Chief, Thirteen or More Unknown Agents of the El Paso Sector Border Patrol, All Individually and in Their Official Capacities, and the Immigration and Naturalization Service, Defendants.**

No. EP-92-CA-319-B.

United States District Court,  
W.D. Texas,  
El Paso Division.

Dec. 1, 1992.

Amended Preliminary Injunction  
Dec. 4, 1992.

United States citizens of Hispanic descent who resided, were employed, attended school, or traveled within high school district located along United States-Mexico border sought class certification and preliminary injunction circumscribing right of Immigration and Naturalization Service (INS) agents to stop and question them about their right to be in the United States. The District Court, Bunton, Senior District Judge, held that: (1) citizens were entitled to preliminary injunction, and (2) citizens were entitled to be certified as representatives of class consisting of individuals of Hispanic descent who resided, were employed, attended school or traveled within high school district.

So ordered.

**1. Injunction ⇨1, 128(1)**

Injunctive relief is extraordinary and drastic remedy which should be granted only when movant clearly carries burden of proof.

809 F.Supp. — 13

**2. Injunction ⇨126**

Nonmoving party bears no burden to defeat motion for injunctive relief.

**3. Civil Rights ⇨268**

United States citizens of Hispanic descent who resided, were employed, attended school, or traveled within high school district located along United States-Mexico border were entitled to preliminary injunction circumscribing right of border patrol agents to stop and question them about their right to be in the United States; citizens established likelihood of prevailing on merits of their claim that agents violated their Fourth and Fifth Amendment rights, balance of hardships favored entry of preliminary relief in favor of citizens, and public interest would be served by protection of citizens' constitutional rights. U.S.C.A. Const.Amend. 4, 5.

**4. Injunction ⇨138.6**

For purpose of preliminary injunction, irreparable injury is established by movants showing constitutionally protected rights have been violated.

**5. Aliens ⇨44, 53.8**

Immigration and Nationality Act (INA) provision allowing Immigration and Naturalization Service INS agent to question person, believed to be alien, about her right to be in the United States is limited by Fourth Amendment, such that agent may not question individual as to her right to be in the United States unless agent has reasonable suspicion, based on specific articulable facts, involving more than mere ethnic appearance, that individual is alien. Immigration and Nationality Act, §§ 101 et seq., 287(a)(1), 8 U.S.C.A. §§ 1101 et seq., 1357(a)(1); U.S.C.A. Const.Amend. 4.

**6. Aliens ⇨53.8**

Questioning individual, believed to be alien, about her right to be in the United States, by Immigration and Naturalization Service (INS) agent who has reasonable suspicion of alienage is permissible so long as agent does not restrain individual and individual reasonably believes she is free to walk away; although it would be indicative of common respect and courtesy, individual is not required to be cooperative in such

## 809 FEDERAL SUPPLEMENT

situation. Immigration and Nationality Act, §§ 101 et seq., 287(a)(1), 8 U.S.C.A. §§ 1101 et seq., 1357(a)(1); U.S.C.A. Const. Amend. 4.

#### 7. Aliens ⇨53.8

Immigration and Naturalization Service (INS) agent must have reasonable suspicion of illegal alienage in order to detain or seize person for interrogation. Immigration and Nationality Act, §§ 101 et seq., 287(a)(1), 8 U.S.C.A. §§ 1101 et seq., 1357(a)(1); U.S.C.A. Const. Amend. 4.

#### 8. Aliens ⇨53.8

Investigative detention by Immigration and Naturalization Service (INS) agent who has reasonable suspicion to believe that individual is of illegal alienage is permissible so long as detention does not last any longer than necessary to determine whether individual is alien illegally in the United States. Immigration and Nationality Act, §§ 101 et seq., 287(a)(1), 8 U.S.C.A. §§ 1101 et seq., 1357(a)(1); U.S.C.A. Const. Amend. 4.

#### 9. Aliens ⇨53.8

Immigration and Naturalization Service (INS) agent may not frisk any individual who has not been arrested unless agent has reasonable suspicion, based on specific articulable facts, that individual is armed. Immigration and Nationality Act, §§ 101 et seq., 287(a)(1), 8 U.S.C.A. §§ 1101 et seq., 1357(a)(1); U.S.C.A. Const. Amend. 4.

#### 10. Arrest ⇨63.5(1)

When individual is stopped solely for purposes of being identified, individual has right to decline to answer law enforcement officer's questions.

#### 11. Arrest ⇨63.5(4)

When individual refuses law enforcement officer's request for identification, officer must have reasonable suspicion of misconduct in order to detain him.

#### 12. Arrest ⇨63.5(4)

No inference of suspicious conduct may be drawn from individual's refusal to cooperate with officer's request.

#### 13. Customs Duties ⇨126(2)

Although border patrol agents of the Immigration and Naturalization Service (INS) have right to patrol automobiles in border areas, agents' actions are circumscribed by the Federal Constitution; thus, agents may stop vehicle only when they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that vehicles contain aliens who may be illegally in country.

#### 14. Aliens ⇨53.8

Immigration and Naturalization Service (INS) agent may not stop vehicle to question individual regarding his right to remain in the United States, unless agent has reasonable suspicion based on specific articulable facts, involving more than mere ethnic appearance, that vehicle contains illegal aliens.

#### 15. Aliens ⇨53.8

Immigration and Naturalization Service (INS) agent who has reasonable suspicion based on specific articulable facts, involving more than mere ethnic appearance, that vehicle contains illegal aliens may question driver and passengers about their citizenship and immigration status and may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause.

#### 16. Searches and Seizures ⇨60

Search or seizure will never be considered reasonable if officer stops vehicle solely because of Mexican ancestry of occupant. U.S.C.A. Const. Amend. 4.

#### 17. Customs Duties ⇨126(1)

Immigration and Naturalization Service (INS) agent must have probable cause to believe that search will uncover evidence relating to illegal activities. U.S.C.A. Const. Amend. 4.

#### 18. Aliens ⇨53.8

##### Customs Duties ⇨126(2)

Immigration and Naturalization Service (INS) agent may not search, without warrant, any individual or his belongings or his vehicle, unless search is made pursu-



**MURILLO v. MUSEGADES**

Cite as 809 F.Supp. 487 (W.D.Tex. 1992)

ant to lawful arrest or unless search is necessary to prevent destruction of evidence and then only if there is probable cause to search. U.S.C.A. Const.Amend. 4.

**19. Aliens**  $\Rightarrow$  53.8

Immigration and Naturalization Service (INS) is held to standard of probable cause when one of its agents arrests individual without warrant. U.S.C.A. Const. Amend. 4.

**20. Aliens**  $\Rightarrow$  53.8

Immigration and Naturalization Service (INS) agent cannot arrest, without valid warrant of arrest, individual for violation of immigration laws as to whom agent does not have probable cause to believe that he is present in the United States illegally, or is guilty of committing offense relating to immigration laws, and then only if individual is likely to escape before agent can obtain arrest warrant. U.S.C.A. Const. Amend. 4.

**21. Arrest**  $\Rightarrow$  68(2)

In course of stop, arrest, or other seizure, law enforcement officer may not use unreasonable and excessive force. U.S.C.A. Const.Amend. 4.

**22. Arrest**  $\Rightarrow$  68(1)

Fourth Amendment protects individuals from physically intrusive behavior during arrest. U.S.C.A. Const.Amend. 4.

**23. Constitutional Law**  $\Rightarrow$  211(1)

Central purpose of Equal Protection Clauses of the United States Constitution is prevention of discrimination against individuals because of membership in protected class. U.S.C.A. Const.Amend. 4.

**24. Constitutional Law**  $\Rightarrow$  319.5(1)

Stopping, questioning, detaining, frisking, arresting, and searching of individuals based solely upon racial and ethnic appearance reprehensively violates Fifth Amendment. U.S.C.A. Const.Amend. 5.

**25. Customs Duties**  $\Rightarrow$  126(2)

Immigration and Naturalization Service (INS) cannot subject United States citizens and permanent residents to stops, questioning, detentions, searches, arrests, verbal and physical abuses, harassment,

and humiliation based upon citizens' and residents' mere Hispanic appearance.

**26. Federal Civil Procedure**  $\Rightarrow$  187.5

Named individual plaintiffs who were United States citizens of Hispanic descent were certified as representatives of class consisting of all individuals of Hispanic descent, including students, graduates, and staff of high school located along United States-Mexico border, who resided, were employed, attended school, and traveled within high school district; potentially large number of class members, approximately 2,037, were geographically dispersed in manner which made joinder impracticable, claims of named plaintiffs were typical of claims of putative plaintiff class and named plaintiffs would fairly and adequately protect interests of putative members of plaintiff class. Fed.Rules Civ.Proc. Rule 23(a), (b)(2), 28 U.S.C.A.

**27. Federal Civil Procedure**  $\Rightarrow$  172

Movants have burden of demonstrating propriety of class certification.

**28. Federal Civil Procedure**  $\Rightarrow$  171

Class action may only be certified if district court is satisfied, after rigorous analysis, that prerequisites of class action rule have been satisfied. Fed.Rules Civ. Proc.Rule 23(a), 28 U.S.C.A.

**29. Federal Civil Procedure**  $\Rightarrow$  161.1

In making decision regarding certification of class, district judge must bear in mind impact of binding judgment on class members and functions of class action facilitating assertion of certain types of claims or defenses and in avoiding repetitious litigation.

**30. Federal Civil Procedure**  $\Rightarrow$  161.1

All of the conjunctive prerequisites of class action rule must be satisfied in order to maintain class action: purpose of these prerequisites is to limit class claims to those fairly encompassed by named plaintiffs' claims. Fed.Rules Civ.Proc.Rule 23(a), 28 U.S.C.A.

**31. Federal Civil Procedure**  $\Rightarrow$  161.1

Where difficulties in maintaining class action outweigh benefits, it is within

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court's discretion to deny certification of class. Fed.Rules Civ.Proc.Rule 23, 28 U.S.C.A.

### 32. Federal Civil Procedure ¶164

Class representative must be part of class and possess same interest and suffer same injury as class members. Fed.Rules Civ.Proc.Rule 23, 28 U.S.C.A.

### 33. Federal Civil Procedure ¶163

With respect to numerosity requirement for class action, basic question is practicability of joinder, not number of interested persons per se, and practicability of joinder depends on size of class, ease of identifying its members and determining their addresses, facility of making service on them if joined, and their geographic dispersion. Fed.Rules Civ.Proc.Rule 23(a), 28 U.S.C.A.

### 34. Federal Civil Procedure ¶164

Adequacy of representation requirement for class actions raises concerns about competency of class counsel and conflicts of interest. Fed.Rules Civ.Proc.Rule 23(a), 28 U.S.C.A.

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Nancy R. Gaines, U.S. Dept. of Justice, Trial Atty., Torts Branch, Civil Div., Allen W. Hausman, Office of Immigration Litigation, U.S. Dept. of Justice, Washington, DC, for defendants.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

BUNTON, Senior District Judge.

BEFORE THIS COURT is Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum of Law in Support, pursuant to Rule 65 of the Federal Rules of Civil Procedure, and Plaintiffs' Motion for Class Certification and Memorandum in Support, pursuant to

Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, in the above-captioned cause. This Court held a hearing in El Paso, Texas on October 23, 1992 in which counsel for Plaintiffs and counsel for Defendants appeared and announced ready. At the hearing, the Motions and expedited Responses were heard, and the parties presented live testimony and numerous affidavits. Post-trial briefs and affidavits were submitted and accepted by the Court. Counsel for both parties are commended for accommodating this Court's tight schedule by presenting an expeditious hearing. In particular, counsel for the Government was placed under a tight preparatory time schedule. All jurisdictional and procedural prerequisites necessary for the maintenance of the claims of the parties are fulfilled. After considering the pleadings, the evidence presented, the deposition testimony, the proffered exhibits and numerous affidavits, the arguments of counsel, and the controlling legal authorities, this Court hereby enters its Findings of Fact and Conclusions of Law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

## JURISDICTION AND VENUE

This Court finds subject matter jurisdiction in the above-captioned cause pursuant to the provisions of 28 U.S.C. §§ 1331, 1343. Venue is proper because Plaintiffs reside in this judicial district. 28 U.S.C. § 1402(b).

## FINDINGS OF FACT

### *The Litigation.*

1. The named individual Plaintiffs are United States citizens of Hispanic descent who are Residents of El Paso, Texas. Plaintiffs include students, graduates, and staff of Bowie High School, who reside, are employed, attend school, or travel within the Bowie High School District.

2. The named individual Plaintiffs ("Plaintiffs" or "representative Plaintiffs") moved this Court to certify them as the representatives of a class "consisting of all individuals of Hispanic descent, including students, graduates, and staff of Bowie

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High School, who reside, are employed, attend school, and travel within the Bowie High School District, El Paso, Texas" (the "Plaintiff Class").

3. Defendant Dale Musegades is Sector Chief for the El Paso United States Border Patrol Sector (the "El Paso Border Patrol") of the Immigration and Naturalization Service (the "INS"), United States Department of Justice, and administers and enforces all immigration laws in the El Paso Sector. The named Defendants and Thirteen Unknown Border Patrol Agents are assigned to the El Paso Border Patrol and are responsible for enforcing immigration laws within the El Paso Border Patrol Sector. *The Bowie High School Area.*

4. Bowie High School is located along the United States-Mexico border in what is considered the fourth most poverty-stricken area in the United States of America. The students primarily come from low socio-economic backgrounds. The vast majority of the residents within the Bowie High School District are of Hispanic descent.

*Plaintiffs' Fourth and Fifth Amendment Rights.*

5. During the morning of November 9, 1991, Plaintiff Benjamin Murillo, Coach of the Bowie High School football team, and Plaintiff Isaac Villalva and Cesar Soto, members of the Bowie High School varsity football team, drove to Jefferson High School to watch the junior varsity football game between Bowie High School and Jefferson High School. Two Defendant Unknown El Paso Border Patrol Agents in an El Paso Border Patrol vehicle stopped the car driven by Plaintiff Coach Murillo.

6. One of Defendant Unknown El Paso Border Patrol Agents approached the car and pointed a pistol at the head of Plaintiff Coach Murillo. Plaintiff Coach Murillo, wearing Bowie High School football coaching shorts and shirt, explained he was the football coach at Bowie High School. He further explained two of his football players were in the car with him and asked the Agent to holster his gun. Plaintiff Coach Murillo, understandably scared, testified he thought because Defendant Unknown El

Paso Border Patrol Agent was pointing the gun at him he or the students were in immediate danger.

7. Coach Jaime Amezaga, an assistant football coach at Bowie High School who witnessed the El Paso Border Patrol stop, drove up and informed Defendant Unknown El Paso Border Patrol Agent they had stopped Plaintiff Murillo, a football coach at Bowie High School. Defendant Unknown Border patrol Agent turned toward Coach Amezaga and, while pointing the pistol at Coach Amezaga, informed Coach Amezaga the matter was none of his business.

8. Defendant Unknown El Paso Border Patrol Agent then searched Plaintiff Coach Murillo without his consent or probable cause.

9. While Plaintiff Coach Murillo was being interrogated, the other Defendant El Paso Border Patrol Agent questioned Plaintiff Isaac Villalva and Cesar Soto, forced them out of the car, and demanded they produce some identification. Plaintiff Isaac Villalva produced his United States military identification.

10. Plaintiff Isaac Villalva has been stopped and questioned by the El Paso Border Patrol several other times.

11. On June 3, 1992, Plaintiffs David Renteria and Juan Carlos Jacquez walked home from the rehearsal of their Bowie High School graduation ceremony. Two Defendant Unknown El Paso Border Patrol Agents stopped and detained Plaintiffs David Renteria and Juan Carlos Jacquez and asked questions concerning their citizenship status. In response to Defendant Unknown Agents' questions, Plaintiffs David Renteria and Juan Carlos Jacquez answered, in English, they were United States citizens.

12. Plaintiffs David Renteria and Juan Carlos Jacquez tried to walk home after answering Defendant Unknown Agents' questions twice. Defendant Unknown Agents shouted and threatened to harm them if they did not stop. Plaintiffs David Renteria and Juan Carlos Jacquez stopped



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walking for fear of the consequences if they refused.

13. Defendant Unknown Agent grabbed Plaintiff David Renteria by the arm, turned him around, and shoved him into a fence, face first. Defendant Unknown Agent pushed his forearm against the back of Plaintiff David Renteria's neck, kicked his legs open, and began to smack him in the back and along the sides of his legs. Plaintiffs David Renteria and Juan Carlos Jacques thought they were not free to go. Defendant Unknown Agents ridiculed Plaintiff David Renteria for exercising his constitutional rights.

14. Approximately two days after the June 3, 1992 incident, one of Defendant Unknown Agents drove by the home of Plaintiff David Renteria while he and his brother Dino Renteria were outside. Defendant Unknown Agent made an obscene gesture at the two boys, stuck his head out the window of the El Paso Border Patrol vehicle, laughed, and spit in their direction.

15. Plaintiff David Renteria and Dino have been stopped and harassed several times before by the El Paso Border Patrol.

16. During the Spring Semester of 1992, Plaintiff Hector Ortiz and a friend were given a ride to Bowie High School by Maria Flores and her brother in her brother's car. The driver and all three passengers were students at Bowie High School. All four students are of Hispanic descent. When they arrived at the Bowie High School parking lot at least three El Paso Border Patrol vehicles surrounded them, according to the Affidavit of Maria Flores.

17. Defendant Unknown El Paso Border Patrol Agents questioned the students as to their citizenship status. All of the students answered, in English, they were either United States citizens or legal permanent residents.

18. Defendant Unknown Agents forced the four students into El Paso Border Patrol vehicles, drove them down to the Santa Fe Bridge processing center, and detained them.

19. Plaintiff Hector Ortiz was taken out of the cell and interrogated by a Defendant

Unknown El Paso Border Patrol Agent. Plaintiff Hector was not informed of his right to an attorney, his right to remain silent, or anything that anything he said could be used against him in a court of law. Defendant Unknown El Paso Border Patrol Agent returned Plaintiff Hector Ortiz to the cell. Several hours later, Plaintiff Hector Ortiz and the other students were released from detention.

20. On or about October of 1991, Plaintiff Grace Hernandez finished her work as a secretary at Bowie High School and went to the football stadium track to jog. After she finished jogging, she returned to her car, which was parked in the Bowie High School parking lot, and drove home.

21. As Plaintiff Grace Hernandez drove north on Cotton Street, an El Paso Border Patrol vehicle stopped her. Defendant Unknown El Paso Border Patrol Agents approached her car and questioned her in what she described as in a harsh tone.

22. Plaintiff Albert Vasquez, in May of 1992, was at the outdoor handball courts at Bowie High School with friends, according to his Affidavit. Plaintiff Albert Vasquez was playing handball. Two Defendant Unknown El Paso Border Patrol Agents came around the courts to grab Plaintiff Albert Vasquez' arm while he was playing handball.

23. Plaintiff Albert Vasquez, on October 8, 1992 at about 10:00 p.m., was with a friend walking in the Bowie High School District. An El Paso Border Patrol vehicle pulled up to them and the Agent asked them where they were born and where they were going. Both Plaintiff Albert Vasquez and his friend answered all the questions in English.

24. Plaintiff Albert Vasquez and a friend, on October 11, 1992, at about 12:00 noon, left home to walk down a street located in the Bowie High School District. An El Paso Border Patrol vehicle drove past them in the opposite direction, turned around, and stopped them.

25. Although Plaintiff Albert Vasquez and his friend attempted to walk on, a Defendant Unknown El Paso Border Patrol



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Agent shouted and grabbed Plaintiff Albert Vasquez' arm and questioned him about his place of birth and destination. Plaintiff Albert Vasquez chose not to answer Defendant Unknown Agent or produce any identification.

26. Plaintiff Albert Vasquez has been stopped many times by the El Paso Border Patrol in the Bowie High School area. Often he would be outside of his home with friends and the El Paso Border Patrol will stop him and ask him for his citizenship. The stops frequently happen on Sundays and sometimes once a week.

27. Representative Plaintiffs, all United States citizens, have been insulted, humiliated, degraded, and embarrassed each time they were unlawfully either stopped, questioned, detained, frisked, arrested, searched, or physically or verbally abused by Defendants. Representative Plaintiffs are afraid they will be stopped, questioned, detained, frisked, arrested, searched, and physically and verbally abused by Defendants in the future without legal cause.

28. The overriding reason Representative Plaintiffs have been, or will be in the future, stopped, questioned, detained, frisked, arrested, searched, and physically and verbally abused by Defendants is of their mere appearance of being from Hispanic descent.

*Persons Similarly Situated to Representative Plaintiffs.*

29. Members of the putative Plaintiff Class are all other persons similarly situated to representative Plaintiffs who are United States citizens or legal permanent residents "of Hispanic descent, including students, graduates, and staff of Bowie High School, who reside, are employed, attend school, and travel within the Bowie High School District, El Paso, Texas."

30. During May of 1992, Marcela De Leon and a friend walked home from school, according to her Affidavit. An El Paso Border Patrol stopped and questioned them.

31. On October 18, 1992, Marcela De Leon was again stopped and questioned by an El Paso Border Patrol Agent as she

walked home from Bowie High School. Marcela De Leon was embarrassed and insulted because she was required to prove her United States citizenship.

32. Some years ago in the summer, Nieden Susie Diaz walked home alone from school, according to her two Affidavits. An El Paso Border Patrol vehicle pulled up near her. The El Paso Border Patrol Agent on the driver's side of the Patrol vehicle got out and approached her. The Agent demanded to know her citizenship and questioned her. Nieden Susie Diaz answered all of his questions in English.

33. The El Paso Border Patrol Agent for no apparent reason knocked Nieden down to the ground and kicked her about twenty times. Nieden Susie Diaz was bruised, in physical pain, and embarrassed and humiliated by this experience. The incident was not the first time she had been detained by the El Paso Border Patrol.

34. Gabriel Garcia was a member of the Bowie High School cross-country track team. According to his Affidavit, during November of 1991 he was running as part of his practice for the team. Gabriel Garcia was wearing "Bowie High" sweats. An El Paso Border Patrol Agent stopped him and repeatedly asked what he was doing and about his citizenship. Gabriel Garcia explained he was training for the Bowie High School cross-country track team, and he was a legal permanent resident of the United States. The Agent angrily demanded Gabriel Garcia prove his citizenship status.

35. In October or November of 1991, Beatriz Adriana Guzman's Godmother drove her home from Bowie High School, according to her Affidavit. An El Paso Border Patrol vehicle stopped the car. Two El Paso Border Patrol Agents approached the car and harshly ordered Beatriz Adriana Guzman to get out of the car. She was intimidated by the El Paso Border Patrol Agent and did as she was ordered because she thought she had no other choice. The Agents demanded the production of some identification from Beatriz Adriana Guzman and her Godmother.

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36. During September of 1992, Ernie Munoz walked to classes at Bowie High School, according to his Affidavit. An El Paso Border Patrol vehicle drove up beside him and Ernie Munoz stopped walking. The El Paso Border Patrol Agent demanded to search Ernie Munoz' backpack and questioned him as to his citizenship.

37. In March or April of 1992, Nidia Rodriguez was on her way home from Bowie High School and was approached by a speeding El Paso Border Patrol vehicle, according to her Affidavit. The El Paso Border Patrol Agents stopped her and angrily questioned her regarding her citizenship. Nidia Rodriguez feared she would be physically hurt by the Agents, and thought the only reason she was stopped was because her skin was "brown."

38. In December of 1991, on a school day, Danny Rojas and his cousin walked home from school, according to his Affidavit. Danny Rojas was born in Watseka, Illinois, more than a stones' throw from the Mexican-American Border, and she currently resides in El Paso. As Danny Rojas and his cousin walked from Bowie High School, an El Paso Border Patrol vehicle approached and stopped about three feet away from them. The El Paso Border Patrol Agent who was driving yelled at them to stop. The Agent repeatedly questioned them as to their citizenship status. Danny and his cousin explained they were United States citizens.

39. In the summer of 1991, Mario Tapia and a friend witnessed an El Paso Border Patrol Agent stop an unidentified man and beat the man with a billy stick, according to Mario Tapia's Affidavit. The beating took place about fifteen to twenty feet away from Mario Tapia and his friend. When Mario Tapia and his friend came to the aid of the man, Mario Tapia and his friend were beaten by the El Paso Border Patrol Agents. Mario Tapia was hit at least four times, once in the face, once in the head, and twice near his stomach.

40. During the summer of 1992, an El Paso Border Patrol vehicle approached Mario and his friend and demanded to know Mario Tapia's citizenship. Mario Ta-

pia did not think he was free to go. Both Mario Tapia and his friend answered they were United States citizens. The Agents continued to question Mario Tapia and his friend and verbally abused them, using profanity.

41. In March or April of the 1991-92 school year, Ricardo Vielma left Bowie High School to walk to his home located near the school, according to his Affidavit. While he was walking across the school parking lot, an El Paso Border Patrol vehicle stopped and yelled for Ricardo Vielma to come to them. The El Paso Border Patrol Agents asked him about his citizenship status, and Ricardo Vielma answered in English. The Agents asked him what was in the gym bag he was carrying. When Ricardo Vielma responded nothing, one Agent pushed him against the vehicle and the other grabbed for the bag. The Agents searched the bag, frisked Ricardo Vielma, threw the bag at him, and told him to get out of here.

42. About five years ago, Alfred M. Silva and his staff were preparing the Bowie High School baseball infield. Alfred M. Silva is a baseball coach, according to his Affidavit. An El Paso Border Patrol vehicle drove onto the campus, jumped the curb, and drove down center and left field. Alfred M. Silva stopped the vehicle and queried the El Paso Border Patrol Agent if driving up and destroying the infield of the baseball diamond was necessary. Without explaining the reason for driving on the infield, the Agent responded he was looking for three large trash bags filled with marijuana, and he simply drove away.

43. On November 9, 1991, Bill Schmidt, a teacher and coach at Bowie High School, was driving in his vehicle with Coach Jaime Amezaga, according to his Affidavit. The two were going from Bowie High School to Jefferson High School to watch a junior varsity football game. They were following behind the car owned by Coach Tom Lowry, a Bowie High School coach, and driven by Coach Murillo. Bill Schmidt noticed an El Paso Border Patrol vehicle behind him with its lights flashing. He pulled over, but the El Paso Border Patrol

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vehicle stopped Coach Murillo's car after passing Bill Schmidt's vehicle. Although some time lapsed, Bill Schmidt parked his vehicle and walked over to Coach Murillo's car. When Bill Schmidt and Coach Ameza-ga arrived, the El Paso Border Patrol Agent seemed upset and irritated at their arrival on the scene.

44. The above individuals, similarly situated to representative Plaintiffs, all United States citizens and legal permanent residents of Hispanic descent, have been insulted, humiliated, degraded, and embarrassed each time they were either stopped, questioned, detained, frisked, arrested, searched, or physically or verbally abused by Defendants. They are afraid they will be stopped, questioned, detained, frisked, arrested, searched, and physically and verbally abused by Defendants in the future without legal cause.

45. The overriding reason these individuals have been, or will be in the future, stopped, questioned, detained, frisked, arrested, searched, and physically and verbally abused by Defendants is because of their mere appearance as being of Hispanic descent.

*Bowie High School Campus and Surrounding Area.*

46. The El Paso Border Patrol has a regular, consistent, and prominent presence on the Bowie High School campus, whether their presence be by parking in the parking lots, speeding along the service roads, jumping across the curbs, or driving across concrete sidewalks and grassy areas. The El Paso Border Patrol's presence is further made known by their driving over the football practice field and baseball diamond, entering the football locker rooms, surveilling with binoculars from the football stadium, and using binoculars to watch flag girls practicing on campus.

47. Bowie High School provides an oasis of safety and freedom for the students and staff who reside within the School District. The continued harassment of Bowie High School students and staff by the El Paso Border Patrol is both an invasion of their civil rights and the oasis.

*Injunction Ordered by This Court in Mendoza v. INS.*

48. Although he has heard about the injunction or opinion issued in *Mendoza v. INS*, 559 F.Supp. 842, 850 (W.D.Tex.1982), El Paso Border Patrol Sector Chief Dale Musegades has not read the injunction or opinion. Defendant Musegades has done nothing to implement or monitor compliance with the terms of the injunction.

49. The El Paso Border Patrol does not keep statistics on the number of United States citizens or legal permanent residents it stops, detains, questions, frisks, searches, arrests, and releases. The records produced by the El Paso Border Patrol and the testimony given by Defendant Musegades contain at least questionable, possibly inflated, and apparently inconsistent statistics regarding the number of aliens unlawfully present in the United States who are arrested in the Bowie High School District. See Defendants' Exhibit 4.

50. Defendant Musegades is aware of complaints by students and residents of the Bowie High School District regarding El Paso Border Patrol abuses. In May of 1992, Civil Rights Commission hearings were held in El Paso, Texas and El Paso Border Patrol abuses were aired.

51. Defendant Musegades claims he is not responsible for any alleged abuses by El Paso Border Patrol Agents unless and until the abuses are properly reported. Defendant Musegades has done nothing to remedy the Fourth Amendment violations reported to him, although he testified if the allegations are true, they are "intolerable."

52. The El Paso Border Patrol does not comply with the policy issued by A.H. Giguiri, District Director of the INS Service El Paso District, which states "that all law enforcement activities at all levels and types of schools is prohibited unless prior approval has been granted as provided...." Defendants' Exhibit 3. Although the policy warns "[f]ailure to comply with this policy will lead to appropriate disciplinary action," Defendants produced no evidence of disciplinary actions for policy violators.



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*System for Reporting El Paso Border Patrol Abuses.*

53. The procedures presently in place for reporting and investigating alleged abuses by the El Paso Border Patrol are ineffective. The procedures are complex and often the victim of abuse is discouraged from filing a complaint by the governmental offices, personnel, and complaint structure.

54. Victims of abuse by the El Paso Border Patrol fail to report the abuse because: (1) victims fear retaliation by the INS and by the El Paso Border Patrol in the form of deportation, criminal charges, or loss of legal immigration status for themselves or family members; (2) victims begrudgingly accept this type of abusive law enforcement action as a way of life; (3) victims have a sense of futility in filing grievances as victims are rarely, if ever, informed of the disposition of their complaints; and (4) victims believe the complaints will neither be rigorously investigated nor officers duly disciplined.

55. Juan Hilario Sybert Coronado is a teacher at Bowie High School. On May 19, 1992, Juan Sybert Coronado observed two male El Paso Border Patrol Agents in their vehicle, which was parked on the lawn behind the Bowie High School administration building. The Agents were using a pair of binoculars to watch groups of female students as they left school. Juan Sybert Coronado attempted to complain about the incident to the El Paso Border Patrol office at the International Cordova Bridge in El Paso, Texas. No one was available to take the complaint. Juan Sybert Coronado then wrote a letter concerning the incident. To date, Juan Sybert Coronado has received no response to his written complaint. *See* Plaintiffs' Exhibit 14.

56. In excess of 800 Bowie High School students and employees signed a petition which was delivered to United States Congressman Ron Coleman asking the El Paso Border Patrol to repair and maintain the holes in the border fence south of Bowie High School. The fence separates Bowie High School from the Republic of Mexico. The petition implored the El Paso Border

Patrol to discontinue using the Bowie High School campus to trap people who were illegally entering the United States from Mexico. The holes in the border fence have existed for at least fifteen to sixteen years. *See* Plaintiffs' Exhibit 14.

*The Gentlemen's Agreement.*

57. In response to a public hue and cry to abuses by the El Paso Border Patrol in the Bowie High School area, the Superintendent of the El Paso Independent School District was forced to address the complaints from students and personnel of Bowie High School. On October 19, 1992, the terms of a "Gentlemen's Agreement" between Defendant Dale Musegades and Dr. Stan Paz, Superintendent of the El Paso Independent School District, were announced from the offices of United States Representative Ron Coleman. The agreement provides only for a system where reports of El Paso Border Patrol abuse of Bowie High School students while on campus will be reported to the office of Dr. Stan Paz.

58. The agreement does not address any method for prohibiting future abuses by the El Paso Border Patrol of Bowie High School students. The agreement does not address remedying any prior abuses of Bowie High School students' Fourth Amendment rights, or any other rights, by El Paso Border Patrol Agents. The agreement does not address any violations committed by the El Paso Border Patrol which occur off of the Bowie High School campus. The agreement does not affect those people who are not students, yet who are Hispanic and reside in or travel through the Bowie High School District and whose rights are violated by the El Paso Border Patrol.

59. Whatever system for after the fact complaints is in place, it cannot usurp the constitutional rights of Plaintiffs. The El Paso Border Patrol has other means of patrolling the border area near Bowie High School which will not infringe on Plaintiffs' constitutional rights.

60. Defendants could patrol the international boundary on the south side of Bowie High School and maintain high visibility



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surveillance on the levee on a regular basis, rather than station El Paso Border Patrol Agents north of, in, and around the Bowie High School campus.

## CONCLUSIONS OF LAW

## PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION.

*Standard.*

[1-3] 1. To show entitlement to a preliminary injunction, movants must establish each of the following: (1) a substantial threat the failure to grant the injunction will result in irreparable injury to movants; (2) the threatened injury to movants outweighs any damages the injunction may cause to non-movants; (3) the injunction will not disserve the public interest; and (4) a substantial likelihood movants will prevail on the merits of their claim. *Allied Mktg. Group, Inc. v. CDL Mkt., Inc.*, 878 F.2d 806, 809 (5th Cir.1989); see *Black Fire Fighters Ass'n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir.1990); *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir.1989); *Buchanan v. United States Postal Serv.*, 508 F.2d 259, 266 (5th Cir. 1975). In the Fifth Circuit, injunctive relief is an "extraordinary and drastic remedy" which should be granted only when a movant clearly carries the burden of persuasion on all four elements. *Black Fire Fighters Ass'n*, 905 F.2d at 65; *Enterprise Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472 (5th Cir. 1985); *Cunat Authority v. Callaway*, 489 F.2d 567, 573 (5th Cir.1974). The heavy burden of proof in justifying an injunction is wholly on the movant. See *Hardin v. Houston Chronicle Publishing Co.*, 572 F.2d 1106, 1107 (5th Cir.1978) (per curiam). The non-moving party bears no burden to defeat the motion. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 442-43, 94 S.Ct. 1113, 1125-26, 39 L.Ed.2d 435 (1974). "Thus, if the movant does not succeed in carrying [the] burden on any one of the four prerequisites, a preliminary injunction may not issue. . . ." *Enterprise Int'l, Inc.*, 762 F.2d at 472; see *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430,

435 (5th Cir. Unit B 1981). "The granting or denying of a preliminary injunction rests in the sound discretion of the [D]istrict [C]ourt." *Clements Wire & Mfg. Co. v. NLRB*, 589 F.2d 894, 897 (5th Cir.1979).

*Irreparable Injury.*

[4] 2. Irreparable injury is established upon movants showing constitutionally protected rights have been violated. *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir.1984); *Mendoza v. INS.*, 559 F.Supp. 842, 850 (W.D.Tex.1982). Plaintiffs demonstrated their rights to protection under the Fourth and Fifth Amendments were violated. Further, Plaintiffs presented ample evidence showing violations will likely continue to occur. The process for accepting and resolving complaints against INS abuse, including the oral agreement between the El Paso Border Patrol and the Bowie High School District Superintendent, is wholly inadequate to curtail future abuses. Irreparable injury was established.

*Balance of Interests.*

3. The balance of hardships favors entry of preliminary relief in favor of Plaintiffs. The Government's interest in enforcing immigration laws does not outweigh the protection of the rights of United States citizens and permanent residents to be free from unreasonable searches and seizures. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 882-83, 95 S.Ct. 2574, 2581, 45 L.Ed.2d 607 (1975); see also *Illinois Migrant Council v. Pilliod*, 540 F.2d 1062, 1071 (7th Cir.1976), modified, 548 F.2d 715 (7th Cir.1977) (en banc); *Mendoza*, 559 F.Supp. at 850. Other means are available to the El Paso Border Patrol to enforce immigration law without resort to wholesale violations of the Fourth and Fifth Amendment rights of students and residents of the Bowie High School District.

*Public Interest.*

4. The public interest will be served by protection of Plaintiffs' constitutional rights. See, e.g., *Electronic Data Sys. Corp. Iran v. Social Sec. Org. of Gov't of Iran*, 508 F.Supp. 1350, 1358 (N.D.Tex.

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1981). Respect for Plaintiffs' constitutional rights is of paramount importance; otherwise, the vast majority of the population within the Bowie High School District, which is Hispanic, will continue to be subject to illegal stops, questioning, detentions, frisks, arrests, searches, and further abuses by the El Paso Border Patrol. *Mendoza*, 559 F.Supp. at 850-51.

5. In addition, the public interest is served when students and their teachers are free from undue interference from law enforcement officers. Education is of "supreme importance" and the "most vital civic institution for the preservation of a democratic system of government." *Plyler v. Doe*, 457 U.S. 202, 221, 102 S.Ct. 2382, 2397, 72 L.Ed.2d 786 (1982) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 400, 43 S.Ct. 625, 627, 67 L.Ed. 1042 (1923); *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 230, 83 S.Ct. 1560, 1576, 10 L.Ed.2d 844 (1963)).

*Substantial Likelihood of Success on Merits.*

6. Plaintiffs have shown a substantial likelihood of success on the merits of all their claims. Plaintiffs have been subjected to violations of the Fourth and Fifth Amendments. Plaintiffs have been, based on their Hispanic appearance, repeatedly stopped, questioned, detained, frisked, searched, and arrested without legal cause, and have been subjected to verbal and physical abuse.

[5] 7. The Immigration and Nationality Act (the "INA") allows an INS Agent to question a person, believed to be an alien, about his or her "right to be or to remain in the United States." 8 U.S.C. § 1357(a)(1). The statutory provision is limited by the Fourth Amendment. An INS Agent may not question any individual as to his or her right to be or to remain in the United States unless the INS Agent has a reasonable suspicion, based on specific articulable facts involving more than mere ethnic appearance, that the individual is an alien. *Brignoni-Ponce*, 422 U.S. at 877-78, 884, 95 S.Ct. at 2578, 2581-82; *Pilliod*, 540 F.2d at 1066; *Au Yi Lau v. INS*, 445 F.2d 217, 223 (D.C.Cir.1971), *cert. denied*, 404 U.S.

864, 92 S.Ct. 64, 30 L.Ed.2d 108; *Ramirez v. Webb*, 599 F.Supp. 1278, 1282 (W.D.Mich. 1984), *aff'd*, 787 F.2d 592 (6th Cir.1986); *Mendoza*, 559 F.Supp. at 847-48.

[6,7] 8. Questioning with reasonable suspicion of alienage is permissible so long as the INS Agent does not restrain the individual, and the individual reasonably believes he or she is free to walk away. Although it would be indicative of common respect and courtesy, the individual is not required to be cooperative in such a situation. The INS Agent must have a reasonable suspicion of illegal alienage in order to detain or "seize" a person for interrogation. *Florida v. Royer*, 460 U.S. 491, 498, 103 S.Ct. 1319, 1324, 75 L.Ed.2d 229 (1983); *Brignoni-Ponce*, 422 U.S. at 878, 95 S.Ct. at 2578; *Mendoza*, 559 F.Supp. at 846; *see also*, *INS v. Delgado*, 466 U.S. 210, 216-20, 104 S.Ct. 1758, 1762-64, 80 L.Ed.2d 247 (1984); *Pilliod*, 540 F.2d at 1070-71 n. 10; *Au Yi Lau v. INS*, 445 F.2d at 223. "[W]henever a police officer accosts an individual and restrains his [or her] freedom to walk away, he has 'seized' that person," ... and the Fourth Amendment requires that the seizure be 'reasonable.'" *Brignoni-Ponce*, 422 U.S. at 878, 95 S.Ct. at 2578 (quoting *Terry v. Ohio*, 392 U.S. 1, 16, 88 S.Ct. 1868, 1877, 20 L.Ed.2d 889 (1968)).

[8;9] 9. An INS Agent may not detain to investigate the alien status of any individual without the necessary reasonable suspicion. Investigative detention with reasonable suspicion of illegal alienage is permissible so long as the detention does not last any longer than necessary to determine whether or not the individual is an alien illegally in the United States. *Brignoni-Ponce*, 422 U.S. at 881, 95 S.Ct. at 2580; *Mendoza*, 559 F.Supp. at 848. Furthermore, the INS Agent may not frisk any individual who has not been arrested unless the INS Agent has a reasonable suspicion, based on specific articulable facts, the individual is armed.

[10-12] 10. When an individual is stopped solely for purposes of being identified, the individual has the right to decline

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to answer a law enforcement officer's questions. *Brown v. Texas*, 443 U.S. 47, 52-53, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 357 (1979). Even when a person refuses an officer's request for identification, the officer must have a reasonable suspicion of misconduct in order to detain him or her. *Id.* at 52, 99 S.Ct. at 2641; *see also Delgado*, 466 U.S. at 216-17, 104 S.Ct. at 1762-63; *Delgado*, 466 U.S. at 228-29, 104 S.Ct. at 1769 (Brennan, J. concurring in part and dissenting in part); *Royer*, 460 U.S. at 497-98, 103 S.Ct. at 1324 (plurality opinion); *Royer*, 460 U.S. at 511-12, 103 S.Ct. at 1331-32 (Brennan, J. concurring in result); *Royer*, 460 U.S. at 514, 103 S.Ct. at 1333 (Blackmun, J. dissenting). Moreover, no inference of suspicious conduct may be drawn from a refusal to cooperate. *See Delgado*, 466 U.S. at 216-17, 104 S.Ct. at 1762-63.

[13-15] 11. Although the El Paso Border Patrol has the right to patrol automobiles in border areas, its actions are circumscribed by the United States Constitution. *See Brignoni-Ponce*, 422 U.S. at 877, 95 S.Ct. at 2578 (quoting *Almeida-Sanchez v. United States*, 413 U.S. 266, 272, 93 S.Ct. 2535, 2539, 37 L.Ed.2d 596 (1973)). Thus, the INS may only stop a vehicle only when an officer "is aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country." *Brignoni-Ponce*, 422 U.S. at 884, 95 S.Ct. at 2582; *see also United States v. Shute*, 402 F.Supp. 1353, 1355-56 (W.D.Tex.1975). "The existence of reasonable suspicion depends on the facts known to the agent at the time the stop is made, not at the moment the agent decides to make the stop." *United States v. Boruff*, 909 F.2d 111, 117 (5th Cir.1990), *cert. denied*, — U.S. —, 111 S.Ct. 1620, 113 L.Ed.2d 718 (1991). In *Brignoni-Ponce*, the Supreme Court delineated several factors for determining reasonable suspicion.

These factors include: (1) characteristics of the area in which the vehicle is encountered; (2) proximity to the border; (3) usual patterns of traffic on the road; (4) previous experience with alien traffic;

(5) information about recent illegal crossings in the area; (6) behavior of the driver; (7) appearance of the vehicle; and (8) number, appearance and behavior of the passengers.

*United States v. Melendez-Gonzalez*, 727 F.2d 407, 410-11 (5th Cir.1984) (citing *Brignoni-Ponce*, 422 U.S. at 884-85, 95 S.Ct. at 2582). Therefore, an INS Agent may not stop any vehicle to question any individual regarding his or her right to be or remain in the United States, unless the INS Agent has a reasonable suspicion based on specific articulable facts involving more than mere ethnic appearance that the vehicle contains aliens illegally in the United States. *Brignoni-Ponce*, 422 U.S. at 884, 95 S.Ct. at 2582. The INS Agent "may question the driver and passengers about their citizenship and immigration status, and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause." *Id.* at 881-82, 95 S.Ct. at 2580.

[16] 12. While the determination of reasonableness must be made on a case-by-case basis, certain guidelines apply by which to measure an INS Agent's actions. As a salient guideline, a search or seizure will *never* be considered reasonable if the officer stops the vehicle *solely because of the Mexican ancestry of the occupant*. *See Brignoni-Ponce*, 422 U.S. at 885-87, 95 S.Ct. at 2582-83; *Ramirez*, 599 F.Supp. at 1283.

[17, 18] 13. The general rule regarding permissible searches is also founded on the principles of the Fourth Amendment. "The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of a traditional arrest." *Brignoni-Ponce*, 422 U.S. at 877, 95 S.Ct. at 2578. Thus, an INS Agent also must have probable cause to believe the search will uncover evidence relating to illegal activities. *See Chambers v. Maroney*, 399 U.S. 42, 51, 90 S.Ct. 1975, 1981, 26 L.Ed.2d 419 (1970); *United States v. Espinoza-Seanez*, 862 F.2d 526, 533 (5th Cir.1988). An INS Agent may not search, without a warrant, any individual or his or



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her belongings or his or her vehicle, unless the search is made pursuant to a lawful arrest or unless the search is necessary to prevent the destruction of evidence and then only if there is probable cause to search. *Chambers*, 399 U.S. at 51, 90 S.Ct. at 1981.

[19,20] 14. The INS is held to the standard of "probable cause" when one of its Agents arrests an individual without a warrant. *Brignoni-Ponce*, 422 U.S. at 882 n. 7, 95 S.Ct. at 2580 n. 7; *Yam Sang Kwai v. INS*, 411 F.2d 683, 687 (D.C.Cir.), cert. denied, 396 U.S. 877, 90 S.Ct. 148, 24 L.Ed.2d 135 (1969); *Mendoza*, 559 F.Supp. at 849; see also *Royer*, 460 U.S. at 498, 103 S.Ct. at 1324. In addition, a warrant is required unless the individual is likely to flee before an arrest warrant can be obtained. 8 U.S.C. § 1357(a)(2). The INS cannot arrest, without a valid warrant of arrest, any individual for a violation of the immigration laws as to whom the INS Agent does not have probable cause to believe that he or she is present in the United States illegally, or is guilty of committing an offense relating to the immigration laws, and then only if the individual is likely to escape before the INS Agent can obtain a warrant of arrest. *Id.*

[21,22] 15. In the course of a stop, arrest, or other seizure, a law enforcement officer may not use unreasonable and excessive force. The Fourth Amendment protects individuals from physically intrusive behavior during an arrest. See *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989); see also *Johnson v. Morel*, 876 F.2d 477, 480 (5th Cir.1989) (en banc); *Hay v. City of Irving*, 893 F.2d 796, 798 (5th Cir.1990) (per curiam).

[23-25] 16. A central purpose of the Equal Protection Clauses of the United States Constitution is the prevention of discrimination against individuals because of membership in a protected class. See *Washington v. Davis*, 426 U.S. 229, 239, 96 S.Ct. 2040, 2047, 48 L.Ed.2d 597 (1976). The stopping, questioning, detaining, frisking, arresting, and searching of individuals based solely upon racial and ethnic appear-

ance reprehensibly violates the Fifth Amendment. The INS cannot subject United States citizens and permanent residents to stops, questioning, detentions, searches, arrests, verbal and physical abuses, harassment, and humiliation based upon the citizens' and residents' mere Hispanic appearance. See *Johnson*, 876 F.2d at 479.

17. A review of the actions of the INS and its Agents in this case demonstrates Defendants violated Plaintiffs' Fourth Amendment rights. Defendants did not have a reasonable suspicion of either alienage or illegal alienage when any of Plaintiffs or members of the putative Plaintiff Class were initially stopped and questioned by INS Agents. For example, the stops and questioning of Plaintiff Coach Benjamin Murillo, who was accompanied by two of his football players, were not based on reasonable suspicion. The stops and questioning of Plaintiffs Grace Hernandez, the school secretary, and numerous students, who were simply leaving school to return to their homes, were not based on reasonable suspicion. Even assuming there was a remote reason for the stops of the Bowie High School students and staff, there was no cause for the detentive questioning which followed each stop. Most Plaintiffs answered the initial questions of the INS and unequivocally stated in English they were legally present in the United States. Plaintiffs' answers served to overcome any "reasonable suspicion" the INS may claim it had and precluded the INS from any further inquiries, detentions, frisks, arrests, searches, physical and verbal abuses, or threats. Defendants lacked probable cause either to arrest Plaintiff Hector Ortiz or to search the belongings of a Plaintiff or other witness.

18. The El Paso Border Patrol's use of excessive force is a further intrusion into Plaintiffs' Fourth Amendment rights. No justification existed for the force used against numerous Plaintiffs and witnesses. For example, there is no evidence which supports any reason for an INS Agent either to push Plaintiff David Renteria's face against a fence or to kick Plaintiff Nieden Susie Diaz, or to point a loaded



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weapon at the head of Plaintiff Coach Benjamin Murillo.

19. The INS in this case discriminated against Plaintiffs in violation of their Fifth Amendment rights to equal protection. The INS has repeatedly and illegally stopped, questioned, detained, frisked, arrested, and searched Plaintiffs and numerous other students from the Bowie High School District. El Paso Border Patrol Agents have subjected Plaintiffs and others to indecent comments, obscene gestures, and humiliation in the presence of their co-workers, friends, family, and relevant community. The proffered evidence strongly supports this Court in its conclusion that the illegal and abusive conduct of the El Paso Border Patrol was directed against Plaintiffs, staff, and residents in the Bowie High School District *solely* because of their mere immutable appearances as Hispanics.

#### PLAINTIFFS' MOTION FOR CLASS CERTIFICATION.

##### Standard.

[26] 20. Under Rule 23(a), a class action is maintainable

only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed.R.Civ.P. 23(a); see *Estate of Remley v. Amoco Prod. Co.*, 100 F.R.D. 419, 420 (S.D.Tex.1983). In short, the four requirements are numerosity, commonality, typicality, and adequacy of representation.

21. In addition to the Rule 23(a) requirements, the action must satisfy the standards for at least one of the three types of class suits listed in Rule 23(b): (1) where the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent, varying, or prejudicial adjudications; (2) where a class may appropriately seek injunctive or declaratory relief; or (3) where common questions of law or fact predominate and a

class action is superior to other available methods of adjudication. See Fed.R.Civ.P. 23(b); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 163, 94 S.Ct. 2140, 2145, 40 L.Ed.2d 732 (1974). Plaintiffs argue this action is appropriately maintainable as a class action pursuant to Rule 23(b)(2).

[27-29] 22. Movants have the burden of demonstrating the propriety of class certification. *Fleming v. Travenol Lab., Inc.*, 707 F.2d 829, 832 (5th Cir.1983). A class action may only be certified if the District Court "is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." *General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 161, 102 S.Ct. 2364, 2372, 72 L.Ed.2d 740 (1982). "The decision to grant or to deny class certification is ... initially committed to the sound discretion of the [D]istrict [J]udge, and the decision will not be overturned except for abuse of discretion." *Horton v. Goose Creek Indep. School Dist.*, 690 F.2d 470, 483 (5th Cir.1982), cert. denied, 463 U.S. 1207, 103 S.Ct. 3536, 77 L.Ed.2d 1387 (1983). In making a decision, the District Judge "must bear in mind the impact of a binding judgment on class members and the functions of the class action in facilitating assertion of certain types of claims or defenses and in avoiding repetitious litigation." *Id.*

[30-32] 23. All four conjunctive prerequisites of Rule 23(a) must be satisfied in order to maintain a class action. See *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 163, 94 S.Ct. 2140, 2145, 40 L.Ed.2d 732 (1974). The purpose of the prerequisites is to "limit the class claims to those fairly encompassed by the named [P]laintiffs' claims." *Falcon*, 457 U.S. at 156, 102 S.Ct. at 2370. Where the difficulties in maintaining a class action outweigh the benefits, it is within the Court's discretion to deny certification of the class. See *Shumate & Co. v. National Ass'n of Sec. Dealers, Inc.*, 509 F.2d 147, 155 (5th Cir.), cert. denied, 423 U.S. 868, 96 S.Ct. 131, 46 L.Ed.2d 97 (1975). Therefore, "a class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *Id.* (quoting *East Tex.*

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*Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403, 97 S.Ct. 1891, 1896, 52 L.Ed.2d 453 (1976)).

24. In their Motion for Class Certification, Plaintiffs ask the Court for permission to represent the class "consisting of all individuals of Hispanic descent, including students, graduates, and staff of Bowie High School, who reside, are employed, attend school, and travel within the Bowie High School District, El Paso, Texas" (the "Plaintiff Class").

#### Numerosity.

[33] 25. With respect to numerosity, "[t]he basic question is practicability of joinder, not number of interested persons per se. Practicability of joinder depends on size of the class, ease of identifying its members and determining their addresses, facility of making service on them if joined[,] and their geographic dispersion." *Garcia v. Gloor*, 618 F.2d 264, 267 (5th Cir.1980), cert. denied, 449 U.S. 1113, 101 S.Ct. 923, 66 L.Ed.2d 842 (1981).

26. The vast majority of the students are of Hispanic descent, as are families and Bowie High School graduates who reside within the Bowie High School District. Many of the putative class members, confined to the Bowie High School District, are identifiable for purposes of making service. The identification and service of these individuals will require some significant efforts by the Plaintiffs. However, the putative class contains prospective members, who may be harmed by Defendants' policies and practices in the future. By definition, the identities of these putative members are unknown. See *Phillips v. Joint Legislative Comm.*, 637 F.2d 1014, 1022 (5th Cir. 1981) ("joinder of unknown individuals is certainly impracticable") (quoting *Jack v. American Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir.1974) (per curiam)). The Court is of the opinion the potentially large number of class members, approximately 2037, are geographically dispersed in a manner which makes joinder impracticable. In addition to the present putative class members, the fact Plaintiffs seek declaratory and injunctive relief on behalf of future members increases the size of the proposed

class. See *Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir.1975).

#### Commonality and Typicality.

27. Further review reveals further grounds upon which this Court bases its grant of Plaintiffs' Motion for Class Certification.

The commonality and typicality requirements of Rule 23(a) tend to merge. Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. Those requirements therefore also tend to merge with the adequacy-of-representation requirement, although the latter requirement also raises concerns about the competency of class counsel and conflicts of interest.

*Falcon*, 457 U.S. at 157 n. 13, 102 S.Ct. at 2370-71 n. 13.

28. The named Plaintiffs allege the putative class member have been, are being, or are subject to stops, questioning, detentions, frisks, arrests, searches, excessive force, and harassment by Defendants. The claims of the Plaintiffs are typical of the claims of the putative Plaintiff Class.

#### Adequacy of Representation.

[34] 29. The adequacy of representation requirement "raises concerns about the competency of class counsel and conflicts of interest." *Falcon*, 457 U.S. at 157 n. 13, 102 S.Ct. at 2370-71 n. 13; see *General Tel. Co. v. EEOC*, 446 U.S. 318, 331, 100 S.Ct. 1698, 1706-07, 64 L.Ed.2d 319 (1980). "Adequate representation basically requires inquiry into three areas: (1) the qualifications of [P]laintiffs' attorney, (2) the possibility that the litigants are involved in a collusive suit[,] and (3) whether the named [P]laintiffs have interests antagonistic to those of the rest of the class." *Parker v. Bell Helicopter Co.*, 78 F.R.D. 507, 512 (N.D.Tex.1978) (citing *Johnson v. Georgia Highway Express, Inc.*, 417 F.2d 1122 (5th Cir.1969)); see also *North Am. Acceptance Corp. Sec. Cases v. Arnall*,

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*Golder & Gregory*, 593 F.2d 642 (5th Cir.), cert. denied, 444 U.S. 956, 100 S.Ct. 436, 62 L.Ed.2d 328 (1979).

30. No indicators are before this Court which express any concern with respect to any of these three inquiries. The Plaintiffs will fairly and adequately protect the interests of the putative members of the Plaintiff Class because they have been and are currently being similarly treated. Plaintiffs have no conflict with the members of the putative class, and they are represented by competent and experienced counsel.

31. The relief Plaintiffs seek is precisely the type of remedial action for which Rule 23(b)(2) was designed. See *Person v. Terminal Transp. Co.*, 634 F.2d 989, 993 (5th Cir.1981).

32. Any conclusion of law more properly characterized as a finding of fact is adopted as such. Any finding of fact more properly characterized as a conclusion of law is adopted as such.

IN ACCORDANCE WITH the foregoing Findings of Fact and Conclusions of Law, the Court will enter its specific Order Granting both Plaintiffs' Motion for Preliminary Injunction in the above-captioned cause in favor of Plaintiff Class in accordance with Rule 65(d) of the Federal Rules of Civil Procedure and Plaintiffs' Motion for Class Certification pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

#### ORDER GRANTING PRELIMINARY INJUNCTION AND CLASS CERTIFICATION

The Court having heard evidence and arguments of counsel in support of and in opposition to Plaintiffs' Motion for Preliminary Injunction and to Plaintiffs' Motion for Class Certification on October 23, 1992 and having filed appropriate Findings of Fact and Conclusions of Law, enters the following Orders:

IT IS ORDERED Plaintiffs' Motion for Class Certification in the above-captioned cause is GRANTED. Representatives of Plaintiff Class shall inform the Court within twenty (20) days of the filing of this

Order how they intent to identify and to notify the members of the Plaintiff Class for purposes of making adequate service.

IT IS FURTHER ORDERED Plaintiffs' Motion for Preliminary Injunction in the above-captioned cause is GRANTED.

IT IS FINALLY ORDERED, in accordance with Rule 65(d) of the Federal Rules of Civil Procedure, the Court hereby ENJOINS the Immigration and Naturalization Service (the "INS"):

- (1) from stopping and questioning an individual as to his or her right to be or remain in the United States
- (2) unless the Agent has a reasonable suspicion, based on specific articulable facts involving more than the mere appearance of the individual being of Hispanic descent,
- (3) that the individual is either illegally in the United States or is guilty of committing an offense against the Immigration Laws of the United States for which the INS has jurisdiction.

#### AMENDED PRELIMINARY INJUNCTION

BEFORE THIS COURT is Defendants' Motion to Amend Preliminary Injunction in the above-captioned cause. The Court having further considered Plaintiffs' Motion for Preliminary Injunction, Defendants' Motion to Amend, and the Court's December 1, 1992 Preliminary Injunction and accompanying Findings of Fact and Conclusions of Law, hereby enters the following Amended Preliminary Injunction in accordance with Rule 65(d) of the Federal Rules of Civil Procedure:

IT IS ORDERED the Court hereby ENJOINS the El Paso United States Border Patrol Sector, as an agency of the Immigration and Naturalization Service (the "INS"), United States Department of Justice,:

- (1) from stopping, detaining, and questioning an individual as to his or her right to be or to remain in the United States

- (2) unless the El Paso Border Patrol Agent has a reasonable suspicion, based on specific articulable facts involving more than the mere appearance of the individual being of Hispanic descent,
- (3) that the individual is either illegally in the United States or is guilty of committing an offense against the Immigration Laws of the United States for which the INS has jurisdiction.

The Amended Preliminary Injunction does not extend to stops, detentions, and questioning occurring at either the United States Border or one of its undisputed Functional Equivalents regarding other legally authorized law enforcement activity, such as inspections or checkpoint activity, for which reasonable suspicion is not required.

IT IS FURTHER ORDERED the Preliminary Injunction filed by this Court on December 1, 1992 is VACATED.

IT IS FINALLY ORDERED Defendants' Motion to Amend the Preliminary Injunction in the above-captioned cause is GRANTED.



#### APPENDIX 4.—STATEMENT OF MARIA JIMENEZ, AMERICAN FRIENDS SERVICE COMMITTEE, IMMIGRATION LAW ENFORCEMENT MONITORING PROJECT

My name is Maria de los Angeles Jimenez. I have worked for the Immigration Law Enforcement Monitoring Project of the American Friends Service Committee since April 1987. The American Friends Service Committee (AFSC) is a Quaker organization that has provided humanitarian service to and supported the legal rights of immigrants and refugees for nearly 75 years.

The Immigration Law Enforcement Monitoring Project has documented official abuses of immigrant, refugee and citizen rights in Texas, California, Arizona and Florida. The AFSC-ILEMP has testified concerning the abuses which arise from the enforcement of immigration laws before the Attorney General of the United States and his representative, the Commissioner of the Immigration and Naturalization Service, as well as the Subcommittee on Human Rights and International Organizations of the Foreign Affairs Committee and Subcommittee on International Law, Immigration and Refugees of the Committee on the Judiciary, both of these standing committees of the United States House of Representatives, and the United States Civil Rights Commission.

As the Director of the AFSC-ILEMP, I work with offices in Houston, Texas, San Diego, California, Tucson, Arizona and Miami, Florida and civil and human rights organizations in El Paso, Texas and the Rio Grande Valley of Texas. AFSC-ILEMP receives first hand reports of human and civil rights abuses by immigration authorities, interviews victims of these abuses, and where possible, carries out investigations of incidents of abuse of authority and violation of human and civil rights. I receive and read reports concerning civil and human rights abuse in the US-Mexico border and in Florida on a regular basis and I frequently visit the above mentioned areas on a regular basis to monitor civil and human rights abuses. AFSC-ILEMP has issued three reports on documented cases of human and civil rights abuse in the enforcement of immigration laws in 1988, 1990 and 1992 respectively. From these documentation efforts over the last five years, we have identified areas of special concern in immigration law enforcement policies and operations which have demonstrated a high potential for producing problems between the local border community and immigration agencies, particularly with the United States Border Patrol.

As a result of work in this area for the last five and a half years, AFSC-ILEMP has advanced specific proposals to curb the abuse of civil and human rights in the enforcement of immigration laws before the Congress of the United States and the Attorney General. Specific meetings to discuss our concerns were held with the INS Commissioner on August 3, 1990, the INS Deputy Commissioner on December 7, 1990 and representatives of the INS Office of Enforcement on February 23, 1990. In these meetings, we indicated that AFSC-ILEMP believes that the lack of structure for official accountability is at the heart of the problem in specifically three areas—the use of force policy, the processing of complaints and the issuance of public information regarding incidents of alleged abuses. In August of 1991, specific model policy statements

addressing these areas were sent to the Attorney General of the United States, the Office of the Inspector General, and the Immigration and Naturalization Service.

AFSC-ILEMP considers that any law enforcement body must be accountable to the community it serves and that an effective system to investigate complaints of officer abuse is crucial to establish and to maintain positive relationships between police and civilians. In addition, we believe that INS might reduce its liabilities if it adequately tracked problem officers by examining annually all complaints, sustained or unsustained, filed against an officer. Thus, we believe that the handling of complaints of officer misconduct is key in the effort to build accountability in any administrative structure. With this in mind I have studied the operations of the system for processing complaints of misconduct under the INS Office of Professional Responsibility (OPR) and after 1989, the Office of the Inspector General (OIG) of the United State Department of Justice, and others in major police departments nationally.

From research on this subject, discussions with professional investigators of law enforcement complaints, and analysis of reported cases, I have identified several problems with the process for investigating allegations of misconduct of INS employees, including the US Border Patrol. Until 1989, responsibility for investigating and reviewing complaints lay with the Office of Professional Responsibility. Almost nine years earlier, the US Civil Rights Commission in its report **The Tarnished Golden Door: Civil Rights Issues in Immigration (1980)** uncovered serious problems such as the lack of a complaint form, the lack of a systematized procedure for informing the public of its right to complain, lack of notification of the status of a complaint and its disposition, a low ratio of investigators to total employees, a lack of an appeal process for unsustained allegations and the lack of a periodic compilation and publication of complaint statistics.

Similar conclusions on the internal complaint and investigative process were reached by the Comptroller General's Office in 1989 by way of testimony of Special Assistant Milton J. Socolar before the House Committee on Government Operations. He observed: "...Justice had numerous internal audit and investigative offices. In addition to lacking central coordination, we found that most of these audit and investigative units were not organizationally independent. Also, the organization and operation of these units could affect the impartiality of their staffs because auditors and investigators sometimes reviewed areas of investigated persons in the unit to which they were assigned. In addition there was no assurance that the Attorney General or the Congress were advised of the results of the work of many of these units." The latter testimony led to the reorganization of the Department of Justice's internal audit and investigative units under the Office of the Inspector General as mandated by the Inspector General Act Amendments of 1988.

However, in our view, the changes brought about by this legislation did little to improve the processing of complaints; the same personnel received, investigated and disposed of complaints of officer misconduct. The OIG process retained all of the shortcomings of the OPR. In addition, under the current system, the OIG is limited in its ability to conduct investigation properly; it is underfunded and understaffed. No corresponding proportional increases in finances comparable to increases of enforcement personnel under its charge is ever requested either by the Department of Justice or the INS. On September 9, 1990, **The New York Times** revealed 15 case-studies of OIG's conducted by the Senate Governmental Affairs Subcommittee on General Services which found that the inspector general system was seriously flawed in requiring the inspectors to report to agency heads on whom they relied for their job evaluations, budgets and bonuses. Specifically, the Senate investigators stated that inspector generals failed to investigate charges or bent rules, conducted investigations improperly through the failure to follow-up on relevant evidence and witnesses, and "whitewashing of final reports by distorting or ignoring both fact and law." The subcommittee report urged

the replacement of these offices with a single centralized United States Office of the Inspector General to ensure effective and impartial investigations.

The failure of the Office of the Inspector General to conduct thorough and fair investigations are illustrated by the following examples:

\* On December 10, 1989, Brian L. Wolf, a 42 year old U.S. citizen, was struck from behind on the head with a flashlight or other instrument by a Border Patrol agent who had pulled him over to the side of a road near Fallbrook, California. He was knocked to the ground. While he was on the ground, the officer continued to strike him with a heavy object. When the assault ended, Wolfe asked for the agents' identification and for a supervisor to be called. The agents refused both of these requests. Wolfe, who suffered permanent neck and shoulder injuries, then called the Sheriff's Department to file assault charges against the agents; the Sheriff's Department informed him that they had no jurisdiction over federal law enforcement officers and suggested that Wolfe call the FBI. Wolf then called the FBI to file a civil rights complaint; the officer who answered his call warned Wolfe that in "90% of these cases nothing ever happened." Wolfe, nonetheless filed the civil rights complaint, only to be sent a Department of Justice form letter three months later in which Wolfe was informed that the FBI investigation had revealed that there had been no violation of his civil rights. Wolfe, unable to work due to the permanent damage to his shoulder, filed a claim for damages against the United States and the agents involved. *Wolfe vs United States*, Case No. 901630K9CM(SD Cal). On June 3, 1992, the lower federal court ruled in favor of the United States Government and the Border Patrol agents by discrediting the Wolfe's testimony in the same manner as with other victims of Border Patrol abuse petitioning in domestic courts.

\* On July 19, 1989, Pedro Garcia, a legal US resident was handcuffed, battered and illegally deported by Border Patrol agents in Downtown El Paso. In an affidavit(7-31-89), his aunt Araceli Molina recounts her experience to the OIG office when she accompanied her nephew to file a complaint. She stated that it appeared to her that the investigator was very friendly with immigration officials and therefore, made her doubt that whether he could undertake an impartial investigation. She wondered why the investigation informed them that it would be difficult to identify the agents involved since Pedro had not obtained their names; Ms. Molina found this hard to believe since she thought that it would be easy to find the officer name on the arrest reports of Pedro's arrest. Since Ms. Molina had never been contacted on a complaint she had filed, she took Pedro to see an attorney. Pedro Garcia was interviewed one mere time by OIG investigators in the presence of his attorney Carlos Spector. In May of 1992, Mr Spector received a reply to a 2 year-old Freedom of Information Act request on the status of the internal investigation of the complaint; the government declined. This denial came three weeks after the government settled a lawsuit with Pedro Garcia for injuries of the original incident.

\* On June 12, 1992, in a hearing before the US Civil Rights Commission, Ricardo Gamboa, the General Counsel of Mexico in El Paso, testified that in the years he has served as consulate he has never had an allegation sustained by either the Office of the Inspector General, the INS or Border Patrol even though he had been investigated and substantiated by the Consulate's Office of Social Protection.

In addition, from interviews with victims of immigration law enforcement abuse and from statistical analysis

of the ILEMP data base, I know that in the current environment many individuals who may have strong claims of abuse against the Border Patrol will never file them. For any complaint system to work effectively, community members must be willing and able to file complaints. Many undocumented people are unaware that they have the right to complain. I have on several occasions participated in training seminars for attorneys with the National Immigration Law Center and found that even practicing immigration attorneys are unaware of the existence of an internal investigative process for filing complaints. Many find obstacles in obtaining information with regard to the process for filing complaints. On October 1, 1992, John Dulles, Senior Policy Analyst for US Civil Rights Commission, related to members of the International Association of Civilian Oversight for Law Enforcement in a plenary session at the annual convention held in San Diego that it had taken him at least two weeks to finally determine the name, location and names of those responsible for investigating complaints of INS misconduct in El Paso when he began making arrangements for the Commission's hearing in El Paso this past June. I have known of cases where the person who wanted to file the complaint was dissuaded from doing so by misinformation provided by agency employees. Legal residents, including U.S. citizens, fear that they might prejudice their immigration status or the status of family members by appearing antagonistic towards the very agency which has the power to admit or to expel them. Many complaints go unreported due to border resident's fear of retaliation, sense of futility that nothing will be done, lack of information as to where to lodge complaints, and previous experience with the existing complaint process which rarely, if ever, informs the complainant of status of the complaint. Many residents of border communities do not believe that the INS will investigate officer misconduct impartially or thoroughly, nor do they believe that the INS will act aggressively on any findings of misconduct. For these reasons, although a percentage of victims pursuing legal redress is substantial, many more opt for taking no action at all. Of 473 actions taken by victims who reported incidents between May 1989 and May 1991, a slightly larger number (203) decided not to take any action as that of those that presented administrative complaints (116). I have known through direct interviews with those victims refraining from taking any action that they fail to pursue established remedies because: 1) victims feared retaliation in the form of deportation, criminal charges or loss of legal immigration status for themselves or family members; 2) victims ignored their rights or did not know where or how to file a complain; 3) victims accepted this type of abusive law enforcement actions as a way of life; 4) victims had a sense of futility in filing a grievance as victims believe that the complaints will not be rigorously investigated nor officers disciplined; and 5) victims are discouraged from filing a complaint due to misinformation given by agency employees.

Thus, in my opinion, the procedure presently in place for reporting alleged misconduct by the Border Patrol or INS employees is inaccessible to the public and ineffective in processing complaints. Additionally, it is more often than not that the victim is discouraged from filing a complaint by the lack of information as to the process, misinformation given by government employees, a structure that rarely if ever informs complainants of the disposition of complaints, and fear of retaliation. The difficulty of filing a grievance under the Department of Justice Office of the Inspector General contributes to under-reporting of incidents of abuses of authority and the lack of accountability on the part of immigration enforcement officers.

For the above reasons, we feel that the establishment of an independent review commission to investigate complaints of misconduct involving immigration officials would be the most effective system in identifying improper law enforcement actions and ensuring that immigration law enforcement agencies take the necessary steps to correct these. In the long run, investigations which are thorough and fair will restore public confidence in the government's ability to hold its employees accountable. For the general public, independent review would signal the government's commitment to protect the human and civil rights of persons.



## APPENDIX 5.—STATEMENT OF ROBERT KOULISH, A DOCTORAL CANDIDATE IN POLITICAL SCIENCE AT THE UNIVERSITY OF WISCONSIN

I am writing to request the following testimony be made part of the record of the Subcommittee's hearing scheduled for September 29, 1993, as you examine the very serious issue of Border Patrol accountability.

My name is Robert Koulish. I am a doctoral candidate in political science at the University of Wisconsin. I am submitting this testimony because my dissertation research focuses on immigration regulation. In the course of my research I have spent about four years at the US- Mexico Border in the Lower Rio Grande Valley. I have conducted research in the community, immigration law offices, immigration detention centers and immigration courts. I have also taught at the University of Texas Pan-American which provides the immediate basis for this testimony.

In what follows, I submit qualitative and quantitative findings to an academic study which I conducted regarding the relationship between immigration authorities and the predominately Hispanic border community in South Texas.

The study was conducted at the University of Texas-Pan American as part of a political science course I taught during the autumn 1991 semester. In this pilot study, students conducted interviews in their families' neighborhoods, and among their friends. The sample population is not random. Approximately 86% of the student interviewers were Hispanic. Most come from working class and lower middle class backgrounds. Many come from migrant backgrounds, and were the first in their family to attend college. The interviewers were bilingual. They were instructed to ask questions in the first language of the persons interviewed, and were asked to explain to the respondents that this was an academic project, and not an activity of a government agency.

The pilot study also collaborated with service organizations such as the Mid Valley Community Center in Weslaco, Texas, and Proyecto Libertad in Harlingen, Texas. With the help of these organizations, additional communities were accessed, including Central American refugee populations in Harlingen, Texas and Brownsville, Texas, and farm worker labor camps in McAllen, Texas and Weslaco, Texas.

### METHODOLOGY:

The pilot study began with the creation of a fifty question survey as part of an in-class project. The entire class participated in forming the questionnaire (See Attachment A). Each student conducted between 5-15 interviews between October 1991- December 1991. **A total of 250 surveys were conducted.** All interviewers used the standard questionnaire designed for the survey. The

questionnaire included 50 questions divided into 3 categories:

1. **Background Information.** These questions provided useful demographic information of the persons being interviewed.
2. **General Attitudes toward immigration authorities.**
3. **Specific encounters with immigration authorities, and their repercussions.** The resulting analysis is presented below.

**Descriptive statistics--percentages and frequency distributions in a non-probability sampling were prepared.** Frequencies consist of a count of responses in each category. This study argues that abuse exists at the Mexico-US Border, but it does not attempt to infer that the results are illustrative of proportions in the community. Higher percentages of a particular type of reported mistreatment do not suggest that these abuses occur more frequently than others. Rather, the percentages are relative to the sample. The pilot study has focused its attention on actual findings, and seeks to provide a general indication of the situation in South Texas.

A random study is currently being conducted which builds on the tentative conclusions herein presented. The results of the random study will provide data for probability sampling methods and inferential statistics. Unlike the pilot study, the data from the random study will provide a representation of the general population in the Lower Rio Grande Valley. The random study has been funded in part by the Poverty and Race Research Action Council. Finally, the study has extended to Tuscon, Arizona under the competent leadership of Mr. Manuel Eschobedo, and Dr. Raquel Goldsmith. It is being headquartered in the Mexican American Studies Department of the University of Arizona, where a random survey will similarly provide a representation of the general population in South Tuscon. The computation and interpretation of data for both South Texas and Tuscon will be completed this autumn.

**I have found during the course of my research that a particularly complex and unusual relationship exists between border communities and the US Border Patrol. It begins with the following observation. All Hispanic residents of border communities, regardless of legal status, are under constant suspicion by immigration authorities.** Pedestrians on community roads, passengers at bus stations and on transit buses headed northward are subject to INS scrutiny, which ranges from being watched to being questioned about legal status and destination. Border Patrol vans surround and explore railroad freight cars and barrios as officers shine flash-light beams into the faces of passers-by. The ritual of monitoring individuals is repeated in the waiting areas of airports, where virtually all passengers are surveyed, some are questioned, and others are detained by uniformed or plain clothes immigration officials.

**While fearing the Border Patrol, residents of the Rio Grande Valley have also generally characterized the US Border Patrol in favorable terms.** Almost half of the respondents (45.7%) gave a favorable job

performance rating to immigration authorities, while almost a third (30.5 %) rated their performance with indifference, and the remaining respondents (22.6%) having disapproved of the conduct of immigration authorities. Similarly, 44% believed the border region was safer as a result of the presence of immigration authorities, 39.4% were indifferent and 14.9% believed that the presence of immigration authorities in the valley made it a threatening place to live (111).

Unlike several studies of the last couple decades of urban minority communities and law enforcement, the South Texas community does not view immigration agencies as an oppressive or hostile police force. The Border Patrol has been intimately involved in the social life of the Border community. Border Patrol officers, the college students working as interviewers, and respondents to the survey shared the same economic, social and cultural resources; have all grown up in the same towns; they were members of the same families, have attended the same schools; and interacted at the same churches, restaurants and meeting places.

The US Border Patrol and district INS offices are of the largest government employers in this impoverished region and one of the region's most steady sources of employment. Due in part to the absence of professional and graduate programs such as accredited law schools, the INS and Border Patrol provide career opportunities which are viewed with a source of pride. As an example, at "Career Day" at the University, the Border Patrol always drew the longest lines of students. Several of my own political science pre-law students have chosen to make careers with INS or the Border Patrol rather than uprooting their families to attend law and professional schools elsewhere. Of the people surveyed, 16% (N=39) reported having applied for work at some immigration agency in the Valley. A greater number, 33.6% (N=80) reported having family members employed by immigration authorities.

Given the intimacy of the relationship between the Border Patrol and the community, the results of this study are all the more startling.

The study indicates that irregular encounters with immigration authorities<sup>1</sup> are a fact of life for residents who have indicated interactions with immigration authorities. Irregular encounters consist of verbal, physical and legal mistreatment by immigration officials as perceived by respondents to a survey. Of the 198 respondents who had some contact with immigration officials, a surprisingly high number (73) reported to interviewers some irregularity in their encounter. While most of the overall

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<sup>1</sup> For the purposes of this study, immigration authorities consist of The US Customs Department, the INS, and the INS Border Patrol.

encounters occurred at the bridge (56.7%) and at the checkpoint (16.7%), with relatively few occurring on the street (6.4%) and at the River (4.9%), the percentage of irregular encounters on the street (16.2%) and at the River (10.8%) was much higher.

Overwhelmingly the victims of alleged mistreatment were Hispanic, Spanish speaking, US citizens. Most were male, young, poor, and alone when the encounter occurred. Unemployed respondents had greater contact with the Border Patrol. The poorer the individual, the more likely for an incident to occur. The ethnicity of the officer played no role in irregular encounters. (253)

Although a substantial number of persons felt they had received some form of mistreatment, significantly, very few persons sought redress.

Of the 250 persons interviewed, only 12.8% (n=32) believed that it was possible to file a complaint. Out of 73 incidents of reported abuse, only 12 individuals registered any sort of complaint. Of significance, none of the individuals who complained were led through an official complaint process. None of these complaints were filed as part of an official grievance procedure.<sup>2</sup>

#### THE BORDER PATROL:

Out of the 37 persons who reported irregular encounters by Border Patrol, 11 persons thought it was possible to register a complaint, while only 7 persons actually registered their displeasure with the incident.<sup>3</sup>

#### CUSTOMS OFFICE:

Similarly, out of 25 persons who reported to the interviewer that they had irregular encounters with Customs, 15 persons believed they could file a complaint, while only four persons took any

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<sup>2</sup> Since one person can make more than one type of complaint, there is a greater number of complaints registered in the survey than number of people making complaints. The complaints were informal in nature and consisted of the following: 10 persons asked questions of the officer at the time of the incident; 6 phone calls or letters were made to the agency after the incident; 10 complaints were made to non immigration offices, including the office of the local congressman, the post office and the social security office).

<sup>3</sup> Again, since one person may register more than one type of complaint, the numbers of complaints is greater than the number of persons complaining. Six complaints were made to the officer at the time of the incident; 2 complaints were made by phone; 6 complaints were registered elsewhere.



action.<sup>4</sup>

The greatest obstacle to filing complaints was the absence of information about the existence of a complaint process and the availability of complaint forms and instructions. More than 3/4 of persons interviewed were not aware of an official complaint process for reporting mistreatment. The official complaint procedure initiates a structural interaction between the complainant and the government. A Mexican male attending UT-Pan Am on a student visa summed up the situation by asking somewhat rhetorically, "Who knows where to report it? I don't" (242-0).

Persons who complained tended to be either older (over 36 years old), better educated (college educated) or wealthier (earning between 10,000-40,000 per year) than the sample population.

In the rare instances where complaints were filed, they were unofficial in nature. No grievances were filed on official government complaint forms to either the Border Patrol nor to Customs. What informal complaints were made, were made to the officer at the time of the incident, and after, respondents or their family members visited in person the border patrol office. Those seeking redress also called Border Patrol Headquarters, and wrote letters to Border Patrol and outside offices. Ostensibly, such complaints consisted of verbal or written expressions of dissatisfaction made to agency officials. While such informal complaints were an attempt to bring attention to the problem, they did not amount to an official assertion of rights, those being a formal action initiated against the agency.

Of the individuals who attempted to file a complaint, several were turned away at the customs or border patrol offices, or were simply ignored. For example, one complainant was stopped by customs at the International Bridge at Hidalgo, Texas-Reynosa, Mexico. His car was "sniffed by dogs and turned over by customs and not fixed afterwards". The respondent attempted to ask questions of officer. As the officer became visibly upset, the respondent fell quiet not wanting any more trouble. The complainant was subsequently turned away at the Customs Patrol office where he attempted to complain. This was followed by a letter to his Congressman. Again, no response was forthcoming. (222)

Similarly, the efforts of several individuals to report

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<sup>4</sup> Four complaints were made directly to the officer at the time of the incident; 2 complaints were made subsequently via phone or letter; and 4 complaints were registered to officers outside the immigration bureaucracy. Further, it should be noted that ten additional persons filed complaints against the INS or local law enforcement.

dissatisfaction with either Customs or Border Patrol were simply ignored. Respondents felt that they were not being taken seriously by authorities in their efforts to file a complaint. Indicative of this was one respondent who reported to the interviewer that after phoning the Border Patrol office for the purpose of reporting the incident, "nothing happened, nothing". (228)

Even in the instance where efforts were made to reach outside offices to file a complaint, no redress was found. One English-speaking Chicano student wrote a letter to his Congressman, the local office of LULAC, and the local, newspaper reporting an incident of mistreatment by the Border Patrol at a shopping mall in Hidalgo, Texas. No formal (official) complaint was ever registered, and no response from the government was forthcoming.

In only two instances, respondents reported that they received apologies from the agency supervisor after having registered a complaint with the agency. The complaints were made in person to the office supervisor. The apologies were verbal and therefore unofficial in nature. Such apologies have been called, "throw aways" or insincere remarks. The husband of a respondent remarked on the incident when he elicited an apology from the Border Patrol supervisor: "His (the supervisors) words meant nothing to him or to me. He probably forgot ever saying them as I walked out of the office...its no skin off his teeth to apologize for a subordinate officer that made a pregnant woman almost lose her baby... To not apologize would have been plain stupid." (230)

In a second instance where an apology was forthcoming, the respondent was driving his truck when stopped by a roving Border Patrol vehicle. The officer said he was looking for drugs and products from Mexico and began to search the truck. The search consisted of ripping the drivers seat out of the truck. Nothing was found, and the officer did not replace the seat. The respondent told the officer he was going to file a complaint. According to the respondent, the officer "didn't seem to care." The respondent went to the Border Patrol headquarters and spoke to the supervisor about filing a complaint. The supervisor told the respondent that the BP officer probably was just "having a bad day", and that it was unfortunate that the agent had "taken his frustrations out on innocent civilians." The supervisor assured the respondent that he would clear up the problem. In the alternative, he assured the respondent that the officer would be transferred to another station. The respondent did not fill out or sign any official forms, and there were no follow up interviews. (229)

#### CONCLUSION:

It is evident that mistreatment instigated by authorities in the Lower Rio Grande Valley is widespread and endemic. Also problematic is the fact that most persons who are recipients of mistreatment do not file complaints. **The reasons for individual and community quiescence are complex but can be traced to two factors:**

1. The Border Patrol has provided a source of civic pride to a community where first and second generation Americans have been employed by the US government to serve and protect sovereign borders of the United States. Consequently, there has been a desire to support the Border Patrol and give to it the benefit of the doubt even after the occurrence of questionable activities.

2. Civic pride has given way to reality. After incidents of mistreatment have occurred, attempts to file complaints have been met with frivolous responses. The absence of information about remedies and the frivolous nature of government responses to complaints have diminished the border community's incentives to exercise its democratic rights of citizenship.

Legislation authorizing a new federal commission to independently investigate complaints against immigration law enforcement officials is long overdue. The alternative makes a mockery out of the community's desire to support these institutions, and makes illusory the right of border residents to be free from intrusive government actions without due process.

Without an independent review commission, it is likely that residents of border communities will continue to bear in silence the gross injustice of irregular encounters.

H.R. 2119 will contribute to a climate of deserved trust between the border patrol and the community. Accountability to the community and independent monitoring of INS would increase civic mindedness rather than continue to bring quiescence to border communities. It would also enhance the legitimacy in the eyes of Congress and the Executive Branch, of the struggling and long troubled Border Patrol and INS. In short, H.R. 2119 offers a win-win proposal. I urge its adoption. The border needs it, and the integrity of the legal process demands it.

APPENDIX: IN THE FOLLOWING ARE THE FINDINGS OF THE PILOT STUDY OF THE BORDER INTERACTION PROJECT BY ROBERT KOULISH, UNIVERSITY OF WISCONSIN DEPARTMENT OF POLITICAL SCIENCE CONDUCTED, AUTUMN 1991.

#### TYPES OF MISTREATMENT:

Most of the mistreatment was verbal and legal in nature, including rude and disrespectful language during questioning and inquiries about legal status. It is common for authenticity of identification papers to be challenged and the documents taken, torn up or seized. In many instances, individuals reported more than one type of mistreatment per encounter. Hence, the number of mistreatment listed below is greater than the number of persons who reported

being mistreated.

OUT OF 250 INDIVIDUALS. RESPONDENTS WHO REPORTED THE FOLLOWING TYPES OF MISTREATMENT:

	OVERALL	BP	CUSTOMS	INS/LOCAL
PHYSICAL	7.2% (N=18)	9.3% (N=8)	7.8% (N=6)	4
VERBAL	22.4% (N=56)	26.7% (N=23)	26% (N=20)	13
LEGAL	23.2% (N=58)	30.2% (N=26)	27.3% (N=21)	11

PHYSICAL MISTREATMENT:

	OVERALL	BP	CUSTOMS	OTHER
use of firearms--	1.2% (3)	0	2.6% (2)	1
hands or fists---	3.2% (8)	3.5% (3)	3.9% (3)	2
nightstick-----	1.2% (3)	1.2% (1)	2.6% (2)	0
handcuffs-----	2.8% (7)	3.5% (3)	1.3% (1)	3
SEXUAL ASSAULT	0	0	0	
OTHER	2.0% (5)	2.3% (2)	3.9% (3)	
TOTAL	26	9	11	6

VERBAL MISTREATMENT:

	OVERALL	BP	CUSTOMS	OTHER
threatened with injury: -----	10	3	2	5
threatened with detention-----	26	11	8	7
threatened with deportation-----	19	6	7	6
rude or inappropriate language--	31	16	8	7
racial or ethnic insults-----	13	5	4	4
sexual harassment-----	2	0	0	2
	101	41	29	31

LEGAL MISTREATMENT:

	OVERALL	BP	CUSTOMS	OTHER
not read rights.....	16	7	5	4
denied access to attorney..	8	3	3	2
signed papers.....	7	2	2	3
documents taken.....	10	4	5	1
not allowed phone call.....	8	5	2	1



illegal search.....	21	9	11	1
strip search.....	8	3	4	1
entry without warrant.....	1	1	0	0
seizure Personal possessions	5	1	3	1
detained.....	37	17	14	6
deported.....	22	9	7	6
other.....	11	6	3	2
<hr/> TOTAL	<hr/> 154	<hr/> 59	<hr/> 52	<hr/> 14

#### SUMMARY OF OVERALL MISTREATMENT BY BORDER PATROL:

- As one would expect, of the 37 persons mistreated by Border Patrol, 32 victims were Hispanic; 2 were Anglo; 2 were Black; 1 was American Indian (232).
- Overwhelmingly victims of irregular encounters were US citizens 81.1% (n=30 of 37)(at 244). 28 were ascriptive US citizens; 2 were naturalized citizens (228).
- Reflective of the sample population itself, most respondents with irregular encounters were between 18-35 years of age.
- Primary language was not found to have played a role in irregular encounters with BP (at 230).
- The ethnicity of the officer was not significant in determining whether or not an irregular encounter took place (253).

#### SUMMARY OF PHYSICAL MISTREATMENT BY BORDER PATROL:

- No Anglos reported physical mistreatment by US Border Patrol (261).
- The younger the respondent (19-35) the more likely to be physically mistreated. Only one person over the age of 26 reported physical mistreatment (263).
- The poorer the respondent the more likely she was to have experienced a physical encounter. No one earning over \$15,000 reported physical mistreatment.
- Spanish speakers were more likely than english speakers to be physically mistreated.
- Employment was not a factor in the incidence of physical mistreatment.
- Hispanic officers are only slightly more likely than Anglo

officers to engage in physical misconduct (at 280)

- Physical mistreatment occurred on the street, at the river, at the checkpoint and by roving patrols (273). There were no reports of physical mistreatment at the airport or by INS in workplace raids.(273).

#### VERBAL MISTREATMENT:

- The most likely recipients of verbal abuse were Hispanic citizens of the United States.
- Most recipients of verbal abuse were between the ages of 18-25 (290).
- The poorer the respondent, the higher the likelihood of mistreatment (294).
- Males were more likely than females to be verbally accosted by Border Patrol.
- It made no difference whether recipient's primary language was Spanish or English (286).
- Hispanic officers were more likely than their Anglo counterparts to engage in verbal misconduct.

#### SELECTED CASE STUDIES:

The following selected case studies illustrate irregular encounters experienced by respondents.

#### PHYSICAL MISTREATMENT--Hands/Fists/Handcuffs

"At the River, I was waiting for some friends who had no papers to cross the river. After we met up, the Border Patrol stopped us. We were asked for our papers. I had mine. My friends didn't have any papers. My friends attempted to run but they were caught. The Border Patrol beat them up. Because one friend who was beaten and handcuffed was bleeding, the Border Patrol officer crossed him through the river again. The officers used many cuss words. They told us if we ran again they would continue to beat the shit out of us." (#157)

Mexican, Spanish speaking female, permanent resident, over 46 years of age:

"I was taking some food to a friend who was working at a local bar. As I was walking in, two Border Patrol officers were questioning patrons at the bar. They turned to me and asked where I was from,

and where I lived. I told them that I lived in Edcouch, Texas and that my husband worked in the sugar mill. Further, I said that I was a resident and was married to an American citizen. The officers did not believe me. They called me a liar. The Hispanic officer physically accosted me, grabbing at me and shaking me. The officers then forcibly removed me from the bar and placed me in their van. They took me to my house. After entering my house without my permission, the Border Patrol officers ransacked the house, took my papers and removed portraits from the walls. They did not tell me what they were looking for. I was then taken to the Mercedes Border Patrol Office where I was detained. While in custody I was not allowed to contact my husband at the sugar mill. I was eventually forcibly "voluntarily returned" to Mexico. I was seven months pregnant at the time of this episode, and during my detention I had become ill and almost lost the baby. After I was forcibly removed to Mexico, an acquaintance contacted my husband, and he went to Mexico in search of me to bring me home. My papers have never been returned." (168)

#### VERBAL MISTREATMENT:

INS standards forbid disrespectful and insulting, abusive, or obscene language.

Despite the official prohibition, however, verbal abuse by INS border patrol is commonly directed at persons the agents seek to question or apprehend. **Of the 132 irregular encounters reported, 56, are instances of verbal mistreatment: humiliation and intimidation.** As the Immigration Law Enforcement Monitoring Project has indicated, verbal abuse usually is used as part of a subjugating technique, often leading to another abuse, physical or a denial of due process (See ILEMP Report 1992). Further, as America's Watch has discovered, agents seem to use obscenities and threats, racial and sexual insults to humiliate the targets or provoke violent response (America's Watch 1992).

Verbal mistreatment was identified in the pilot study by the categories: threatened with injury; threatened with detention; threatened with deportation; rude or inappropriate language; racial or ethnic insults; and sexual harassment. **Of the 101 incidences of verbal mistreatment identified from the data, most, 31 consisted of rude or inappropriate language.**

Even though street and river incidences are low for the sample, there is a high frequency of verbal abuse on street encounters and at encounters at the River (300).

#### VERBAL MISTREATMENT BY BORDER PATROL:

Mexican male, Spanish speaking, 31 Years Old:

"At one incident at the Falfurrias checkpoint, the Border Patrol

asked for papers. After looking at our papers, the officer called us, "fucking Mexicans" and said the papers were fake. The officer ordered us out of my tractor truck and then, with the help of a dog, the officer searched my truck. After about two hours, the officer finally let us go." (155)

#### VERBAL ABUSE BY CUSTOMS OFFICIALS:

Chicana Female, Bilingual, Age 21, Widow:

"I went to Mexico on a Saturday afternoon to visit my grandmother and to buy groceries. My husband had just died so I would always carry his birth certificate as well as mine to show I had been married. When I crossed the bridge I was stopped and asked to go with an officer. Never had I had any problems until that time. I was attended to by a female who was mean and rude. The officer accused me of lying about my identity. She said that ID's were someone else's and that I had stolen them. I was asked more questions. She also refused to believe that my husband was dead. They took away my passport because they thought it was stolen. I was detained for seven hours after which I was released. The officer called me a 'wetback' ("mojada"). I argued with her but finally I just replied, "I am a mojada and so what of it" (even though I'm not). She looked surprised. Finally a male officer approached us and asked the female officer that I be released, that my papers were valid, but the female officer, who had the higher rank, refused to release me. No one could do anything, and I was "returned" to Mexico.

Chicano male, Bilingual, 30 years old, married:

"I get stopped and questioned at all checkpoints. I have a dark complexion. My wife is a light skinned Anglo with light blonde hair. On one of our trips from Reynosa, we were stopped and questioned after walking over the bridge. The customs officers took my wife aside and asked her if she "knew these men", meaning me and my brother. They thought perhaps she was with us against her will. They looked at her in disbelief as she replied she was married to me, and the other was her brother in-law. (201)

#### LEGAL MISTREATMENT:

CHECKPOINT SEARCH:

Chicano male, Age 23, single:

"I was on my way to Houston and was stopped at the Falfurrias checkpoint. Two Hispanic agents asked routine questions and then asked us to pull over for searching purposes. The search took about 30 minutes. They brought out a dog to check for drugs, and they also did their own searching. After 30 minutes they told us that they were searching for illicit drugs or illegal weapons. I thought I was singled out because my car had tinted windows, a car phone, and I was dark skinned. (164)



## ILLEGAL OR INAPPROPRIATE SEARCH:

Chicano male, Spanish speaker, Age 24, College student, Single:  
 "It was a weekday at about 8am. My brother and I were on our way to UT-Pan American. We were driving an old '78 chevy truck and were stopped at the Falfurrias checkpoint and asked where we were going. We said, school, and they pulled us over to the side. The agent completely searched the truck--checked the spare tire, went under the truck, checked the motor, glove compartment and knocked on the side doors. Throughout the search they repeated their question, where were we going and who did the truck belong to. After about a half hour they said we could leave. (180)

## ROVING PATROLS:

1. In one incident, a college student driving in his car with friends on Highway 281 was stopped by the Border patrol. At the side of the road, and with shotguns in their hands, the officers searched the student's vehicle. After several minutes the officers returned to their car and drove off.

## CUSTOMS STRIP SEARCH:

Chicana Woman

"After my car was searched by Customs officers, I was taken into the Customs office at the bridge, was stripped and cavity searched. I was detained for 1 1/2 hours. I believed I had been sexually abused during the encounter. After inquiring of the officer why I was singled out I was told it was because I was wearing a t-shirt that read, ECUADOR!, which to the officer meant I was from South America and ... was either "illegal" or a drug smuggler."

Chicano Male, English Speaking, 27 years old:

"One day as I was coming from Rio Bravo with groceries that I had bought on the US side. After dropping off some of the groceries in rio Bravo, I came to the bridge in Hidalgo and was questioned as usual. I told the officers that I had gone to Rio Bravo and delivered some of the groceries. In particular I mentioned I had bought a sack of flour. The officer asked me to drive my car over to the side. A dog was brought to sniff the car for possible narcotics. Nothing was found. After a series of repetitious questions, I was pat searched, was asked to empty out my pockets as they searched my wallet. I was then taken into a room where i was strip searched and after a while I was released.

In a second incident, a few weeks later, I was singled out from a group of friends. The group had gone to Reynosa on a Friday night and was somewhat intoxicated as we walked back across the bridge to Hidalgo. Everyone except me was very loud. I'm a pretty quiet person. After we were all questioned by Customs, everyone was let go except me. I was forced into a room. A particular Hispanic agent ordered me to strip for a search. After a half-hour of refusing to be stripped searched and questioning the agents authority to have

me stripped, I requested to see his superior officer. I asked the superior officer why none of the other people in my group were asked to strip. It was clear to me that this particular officer wanted me to strip ... I requested that another agent conduct the strip search but the detaining agent refused my request. He said he would strip me himself if he had to. Finally the superior officer ordered him to let me go and said that I did not have to be searched."

#### DETENTION:

##### DETENTION BY BP AT CHECKPOINT

Of 154 instances of legal mistreatment, illegal or inappropriate detention occurred most frequently.

##### ILLEGAL OR INAPPROPRIATE DETENTION BY BORDER PATROL:

##### ILLEGAL DETENTION IN AUTO:

"I was coming up from the river because I left a friend that lived near the river. The Border Patrol stopped me. They searched the car, and then called the cops because I didn't have insurance." (239)

##### ILLEGAL OR INAPPROPRIATE SEIZURE OF PERSON:

Comprises actions by immigration authorities that deprived victims of their personal liberty in unlawful temporary detention, false arrest, deprivation of food or water or medical attention while detained, or illegal deportations (ILEMP at 29).

"My father owns a tire shop in Hidalgo. One day my brother and I had no ride home so we decided to walk back to McAllen on 23rd St. Since my brother had been working all day he had a pair of dirty overalls that looked real trashy. Also, my brother is the darkest one in my family, no wonder we call him, "el negro" I guess all this and his red cap gave enough reason for the "green van" to see him and ask him some questions. Also maybe it was because we were walking near the flea market. Everybody knows that a lot of illegals go there. So they stopped us and asked in Spanish where we were going. My brother answered in Spanish that we were going home. With a small laugh, the officer told him that we must definitely be going the wrong direction (North) into McAllen. So he put us in the suburban van and took us back (South) to Hidalgo, where we had to call my mother to have her bring his birth certificate." (210)

##### Chicano Male, Age 21, College Student:

"In one incident in Lyford, Texas, I was on my way home after playing basketball with friends when I was stopped by a roving border patrol van. Since I was dressed in running shorts and sneakers, I wasn't carrying a wallet with I.D. Using rude and abusive language, the Border Patrol ordered me to come inside the van and took me to my house. After we arrived, they asked my grandfather to show proof of my citizenship... They threatened to take me to the detention center and have me "deported" to Mexico." (177)

Mexican Male, Spanish Speaking, Age 26: In a similar situation where pedestrians are stopped on Valley streets by Border Patrol and threatened. Some are questioned, some detained. An individual out for a morning jog before work was stopped by Border Patrol and forcibly detained. The agents put him in their car and drove him back to his house to produce identification to verify his permanent residence status. no complaint filed.

#### DETAINED/STOPPED BY CUSTOMS

**Persons interviewed have reported being singled out by Customs officers because they were Hispanic.** In one incident, a group of about ten members of the U.S. army crossed the international bridge at Reynosa/Hidalgo, Texas. One member of the group was hispanic. Upon request, all ten showed their military identification. The Hispanic man was the only person to be singled out for further questioning. He was not released until he had answered questions about his birthplace, permanent residence and where he was stationed. "I was harassed and detained for about 10 minutes."

#### DETAINED BY CUSTOMS

In another incident, an Hispanic college professor reports that he had been detained for several hours by Customs at the International Bridge. He was released without ever being told why he was detained. The professor was "certain" it was because of his ethnicity, "I look Mexican", he said. No complaint was filed; The professor said he didn't even think about filing a complaint. "That's just the way things are down here...it's a joke, but it's not funny...You just get used to it'.

Chicana woman, college student:

"My parents were detained because Customs wanted to verify that my mother's baby really belonged to her. My father had to come all the way to Edinburg about 20 miles away to get the one year old baby's birth certificate and to show proof that the baby was theirs. After he returned, they were finally allowed to leave. They thought my parents were smuggling in their own baby." (223)

#### MISCELLANEOUS MISTREATMENT:

##### BORDER PATROL:

##### ENTRY W/O WARRANT

In an isolated encounter, one subject reported that Border Patrol officers entered her home unannounced and without a search warrant or her permission. Upon entry, the Border Patrol announced they were in search of "illegal aliens".

##### HARASSMENT:

In another reported incident, Border Patrol officers threw rocks and shouted insults at a small group of immigrants who were

swimming across the Rio Grande. They subsequently avoided apprehension and entered the US.  
no complaint filed;

#### SEIZURE OR DESTRUCTION OF PROPERTY:

Five instances consisted of seizure or destruction of property.

#### CUSTOMS

##### PAPERS TAKEN:

One respondent was accused of having a bad passport and was detained for about 30 minutes. The passport was confiscated. (154)

CUSTOMS TRASHED PAPERS/ ILLEGAL DETENTION: I-72 ID card; "I was told at customs at the Hidalgo bridge that the picture on my I-72 card didn't look like me. The official tore up the card in front of others in line to pay toll to cross. I was detained at the bridge for 3 hours because the officer said the card was false."  
(174)

#### THREATENED WITH DEPORTATION

U.S. citizens are threatened with "deportation" to Mexico. In most instances "deportation" is actually forced "voluntary return" or "voluntary departure" No deportation hearing is involved. Rather, the Border Patrol threatens to take the individual to Mexico via the closest International bridge.

#### LEGAL MISTREATMENT:

In the pilot study, out of a total of 276 specific instances mistreatment reported, legal mistreatment consisted of the highest number, 154. The category, Legal Mistreatment, consists of the following: not read rights; denied access to attorney; signed papers; documents taken; not allowed phone call; illegal search; strip search; entry without warrant; seizure personal possessions; detained; deported; other.

#### ILLEGAL OR INAPPROPRIATE SEARCHES:

Out of 154 legal mistreatments identified, there were 30 incidents consisting of illegal or inappropriate searches. In the survey an illegal or inappropriate search consisted of categories with the following moniker: search of person, strip search, and entry without a warrant. Ostensibly, an illegal or inappropriate search occurs where immigration officers have violated a person's constitutional right to be protected from unreasonable governmental actions such as being questioned solely on the basis of ethnic appearance, entry without a warrant or consent, overzealous execution of a search warrant, strip searching without reasonable basis, and illegal raids (See ILEMP at 27).



APPENDIX 6.—STATEMENT OF MIMI LÓPEZ, CASE MANAGER,  
ALBUQUERQUE BORDER CITY PROJECT

# ALBUQUERQUE BORDER CITY PROJECT



*"If the law does not protect you, it does not protect me either."*

- Bernard Malamud -

September 23, 1993

Honorable Romano Mazzoli  
Chairman  
Subcommittee on International Law,  
Immigration and Refugees  
B-370-B Rayburn House Office Building  
Washington, DC 20515

Dear Congressman Mazzoli:

We request that this letter and the enclosed supporting documents be made part of the public record of the Subcommittee's hearing on HR2119 scheduled for September 29, 1993.

Our agency, the Albuquerque Border City Project, works directly with immigrants assisting them with immigration matters. Our agency is accredited by the Board of Immigration Appeals (BIA), and all our staff are either attorneys or BIA accredited representatives.

Both as an organization and as individuals, we have been concerned for several years with the problem of immigration law enforcement abuse and violations of rights, as well as the lack of responsiveness on the part of the Immigration and Naturalization Service (INS) and the U.S. Border Patrol (BP) when complaints are voiced. Although Albuquerque is not a border city, (we are about 265 miles north of the U.S.-Mexico border), both the INS and the Border Patrol have a very active presence in Albuquerque. Officials of both agencies routinely stop and/or apprehend people in a variety of settings, including private homes, workplaces, transportation facilities (airport, bus and train depots), and/or those just walking or driving down the street. For this reason, we are concerned about situations such as the following:

1) In June 1993, the INS and local police jointly made a pre-dawn raid at an apartment complex in Santa Fe, New Mexico. Approximately 75 people were apprehended and brought to Albuquerque (60 miles away) for further investigation. Most of these people were "voluntarily departed," which in this case means they were loaded into an INS vehicle and transported to the border. The conditions of their detention in Albuquerque and the conditions on the INS bus during their trip south constitute psychological abuse (see attached letter with translation).

2) In 1992, a Salvadoran, who had a non-frivolous political asylum application pending, went to the Albuquerque INS office to renew his work permit. Due to some type of record keeping error on the part of INS, the INS interviewer declared him a deportable individual and ordered him transferred to the INS detention center in

El Paso, Texas. The local INS investigator confiscated all the Salvadoran individual's documents (driver's license, social security card, INS work permit). The Salvadoran protested, insisting that he was in a legitimate status, but his protests were ignored. Additionally, the INS denied his request to telephone his sister, with whom he lived, to inform her of his plight. He was transported to the El Paso detention center where he remained four (4) days while an attorney worked to prove to the INS that they had made an error. When he was finally released, the Salvadoran attempted to recover his documents that had been confiscated. The Albuquerque INS office stated they had no record or knowledge of having taken possession of them. He never was able to recover them, and this put him in a very vulnerable situation. The flagrant abuses of legal rights in this case are obvious.

3) In 1990, INS investigators entered a local public elementary school, over the repeated objections of the school principal. With the handcuffed mother of two of the school's students in tow, they removed the children to "voluntarily depart" them along with their mother on the daily INS van to the border. Here is another example of psychological abuse: the INS could have carried out this operation in the privacy of the family's home instead of striking fear in the school children who witnessed this operation. There was such outrage in Albuquerque over this incident that our Senator, Jeff Bingaman, convened an emergency meeting. This resulted in the INS District Director of El Paso (Albuquerque is a sub office of El Paso) issuing a policy severely limiting INS/BP enforcement practices at educational institutions. Despite this policy being in place, Border Patrol agents consistently violated it by repeatedly intruding into Bowie High School in El Paso, Texas to harass and intimidate students and staff. The situation became so intolerable that a group of students and staff finally had no recourse but to file a class action suit against the Border Patrol in the U.S. District Court in El Paso. In 1992 the District Court ruled in favor of the students and issued an injunction against the Border Patrol.

4) In 1989, Albuquerque INS was detaining unaccompanied, undocumented, Central American children in a criminal juvenile detention facility about 20 miles south of the city. These juveniles' legal rights were violated because the INS did not inform them of their rights to representation by an attorney.

These are just a very small sampling of incidents and cases to give you an idea of the kinds of abuses that occur in the Albuquerque area. I have purposely selected incidents from various years in order to indicate that this is an ongoing problem.

Although these incidents do not have the aspect of physical violence all too often encountered in the border sectors, they are, nevertheless, violations of people's rights, and constitute abuse on the part of INS/BP personnel. More importantly, there is no responsive mechanism for redress of these abuses. The current system, in which the agency investigates itself as a response to any complaints, must be changed! This system blatantly encourages the INS/BP to act with impunity. Just about three months ago, at the monthly meeting of the local INS-Community Relations Board, Mr. Doug Brown, the Officer in Charge of the Albuquerque INS office, stated unequivocally that he was not responsible to the public but rather only to Congress. This is unacceptable. Public officials are representing us, the public, and they must be held accountable!

The escalating incidences of INS/BP abuse and the increasing militarization of the border are strong indicators of the need for an objective, intelligent, review process. We strongly urge passage of HR 2119 which would establish an independent civilian review process. This process should ensure fair investigations of complaints which would benefit all parties involved.

Yours truly,

*Mimi López*

Mimi López, Case Manager  
Albuquerque Border City Project

ML/mpg  
enclosures

The attached is an excerpt from a letter (in Spanish) received at the office of the Albuquerque Border City Project in July 1993. It was written by the wife of a family that was apprehended in the June 1993 INS raid of the apartment complex in Santa Fe, New Mexico. The letter describes the conditions of their detention. An English translation of the letter is provided. The name and telephone number of the letter writer have been deleted to protect her privacy.

TRANSLATION OF LETTER WRITTEN IN SPANISH

I am writing this letter in hope that you can help us a little, and because we believe that what was done to us, to my family and to all the other people apprehended by immigration on June 13, 1993 was a discriminatory action and completely lacking in humanity.

We know only too well that we are undocumented, but nevertheless, we did not deserve to be treated in the way that we were treated. Immigration arrived at 6:00am and nearly broke the door down. They made the four of us sit down at the table, and they treated us like criminals. They demanded that we give them any false documents we might have, saying that if we didn't hand them over they would search for them. They began searching. Then they told us to gather up a few personal items and they took us downstairs to the van. They took us to Albuquerque, arriving there at 9:15am. There we were detained for six (6) hours waiting the arrival of the bus. (The INS vehicle that transports people to the border.) We had nothing to eat during that time, except that those with small children were given a little bit of lunch just for the small children. Men and women were separated from each other and were kept detained in separate areas. This waiting in detention was a time of despair.

The bus that came at 3:30 in the afternoon was in an unsanitary condition. There was a strong bathroom odor permeating the air inside the bus. We protested, but we were not listened to. We protested on behalf of the children because they were the ones most affected. We had to cover our mouths and noses with whatever we could; some of us didn't even have so much as a piece of paper we could use.



## Albuquerque Border City Project.

Solamente escribo esta carta con el fin de buscar un poco de ayuda, y porque creemos que lo que hicieron con nosotros, con mi familia y con todas las demás personas que la Emigración recogió el día 13 de Junio de 1943 fue una discriminación y una falta de humanidad.

Nosotros estamos muy concientes de que somos ilegales, pero también el trato que recibimos no lo merecemos, porque llegar a las 6:00 de la mañana y casi tirando la puerta, y nos sentaron a los cuatro en la mesa tratándonos como delincuentes, nos pidieron los papeles checcos y dijeron que si no los entregabamos ellos los iban a buscar, pero si empezaron a buscar nos dijeron que recogieran algunas cosas y nos subieron a la camioneta, nos llevaron a Albuquerque a las 9:15 de la mañana y ahí nos tuvieron 6:00 horas esperando a que un camión viniera por nosotros sin comer. pues a las personas con niños pequeños solamente a los niños les dieron un pequeño almuerzo pero nada más, nos separaron a los hombres en un lugar y las mujeres en otro, fue una espera desesperante.

El camión que llegó a las 3:30 de la tarde estaba en condiciones insalubres, los olores de baño que se mezclaban, nos obligaron a protestar pero no fuimos escuchados, pues nosotros

le pedíamos solo por los niños, porque ellos fueren los mas afectados, y tuvimos que taparnos la boca y la nariz con lo que pudiéramos .pues algunos ni un pedazo de papel siquiera traíamos.

## APPENDIX 7.—STATEMENT OF ROBERTO L. MARTINEZ, AMERICAN FRIENDS SERVICE COMMITTEE

Mr. chairman, members of the sub-committee, my name is Roberto Martinez. I am Director of the U.S.-Mexico Border Program for the American Friends Service Committee in San Diego, California. For the last ten years, the Border Program has been monitoring and documenting human and civil rights abuses along the California/Baja California border by US Border Patrol and other Federal agents. Since the focus of our program is US/Mexico relations, as well as protecting the dignity and rights of both documented and undocumented immigrants, we have made the treatment of immigrants a top priority.

Over the last ten years human and civil rights violations have run the gamut of abuses imaginable. From shootings that have left dozens of men and boys dead and injured, to sexual and physical abuse, including several rapes by US Border Patrol agents. The most common abuse we document is physical abuse. Although shootings are less frequent now, victims of physical abuse are found to be suffering more severe injuries than ever before.

At the present time, besides severe physical abuse cases, we are also experiencing an increase in arrests and abuses against US citizen's by both US Border Patrol and US Customs. Both US citizen's and legal residents are often either excluded from entering the United States at the ports of entry or when stopped by Border Patrol are not given the benefit of the doubt as to their citizenship. They are often accused of falsifying their documents or accused of buying them illegally. Even original birth certificates and green cards are confiscated as fraudulent documents leaving the victim with the financial burden of having to go through a lengthy process of applying for a new document.

This same abuse applies to victims of residential raids where

both US citizen's and legal residents are caught up in the sweeps with suspected undocumented immigrants. Because local police and Sheriff's often accompany Border Patrol on the raids there is growing distrust of all law enforcement by Latino residents. Local law enforcement agencies are known to confiscate legal documents from immigrants.

Second only to deaths by shooting, and which are one of the worst examples of an agency allowed to run loose with little or no supervision, discipline or accountability, are cases of rape and sexual abuse of migrant women by US Border Patrol agents along the US Mexico border region. Reports of rape and sexual abuse in INS detention centers around the United States, although not new, seem to be escalating throughout the border region. Last year a Border Patrol agent was sentenced to 25-30 years for kidnapping and raping a 16 year old undocumented girl. The year before he had raped and deported a Mexican woman. Last month a Border Patrol agent was arrested in Tucson, Az for raping a Mexican woman in the Nogales area. We feel that fear, humiliation and/ or retribution keep victims of rape and sexual abuse from coming forward. We probably receive only a fraction of all abuse cases here in San Diego.

Over the years, the AFSC has tried working with the Office of Inspector General, the FBI, the US Attorney's office and other law enforcement agencies to attempt to, not only seek some form of redress, but to ascertain what form of complaint process was available to the victims of abuse by Federal agents. We also hoped to track repeat offenders. In the process we exposed severe laxity in the enforcement of their arms policy and basic due process rights policies, especially where it pertains to voluntary return. Criminal prosecution of agents for violation of civil rights is almost non-existent. The FBI recently informed me that they were not going to pursue any of the seven cases recently turned over to



them by OIG. This continuous lack of willingness to prosecute abusive agents has created growing distrust and confidence in the criminal justice system to break the cycle of violence on the US-Mexico border.

In September of this year, the COMMITTEE ON GOVERNMENT OPERATIONS issued a scathing report questioning the leadership, direction and accountability of INS. The report also cited "lack of substantive knowledge and adequate managerial competence". The report also went on to cite serious allegations of misconduct by US Border Patrol against Latinos along the border region with Mexico. The National Council of La Raza was also quoted as supporting the AFSC and America's Watch in the establishment of a federal civilian review board to investigate complaints of abuse.

HR2119 would be an important first step toward creating a system of accountability for federal law enforcement agencies. At this very moment US Border Patrol agents in San Diego are undergoing civil rights training by the Justice Department. At the same time, some of the worst cases of beatings and injuries by Border Patrol are taking place. Therefore, it is obvious US Border Patrol agents here in San Diego are not taking this training the least bit serious, pointing to total lack of leadership.

We believe it is time Chief Border Patrol agents be held legally and morally responsible for allowing human and civil rights abuses to continue for so long, especially in places like San Diego where both documented and undocumented migrants have been subjected to some of the worst forms of human and civil rights violations anywhere in this hemisphere. It has been obvious to us for some time that Chief Border Patrol agents in San Diego lost control of their field personnel, as well as their Supervisors, nearly 15 years ago when we began receiving reports of shootings, rapes and beatings on our border with Tijuana.

HR2119 would set up a system for tracking repeat offenders and other agents who stand by and do nothing to intervene. This seems to be a chronic problem in most law enforcement agencies. However, citizen's review alone is not a solution to border violence by law enforcement. Improved training, supervision, discipline and Chief Border Patrol agents who exert strong leadership and control of their sectors are also needed to turn the present situation around.

Citizen's review and improved training can only succeed if the political will exists in Washington D.C. for it to succeed. INS and US Border Patrol reform from the top down, as well as, serious consideration of reports and recommendations of its own agencies that call for reform of the INS are important challenges facing the attorney General and the new INS Commissioner. Even one of its own, U.S. Justice Department Inspector General Richard J. Handinson said in March of this year that, the Border Patrol "is often indifferent when it comes to screening its employees and training them, much of their work is unsupervised, and administrative discipline is sometimes haphazard".

The US-Mexico border has evolved into more of a human rights battlefield than a political boundary that separates two friendly countries. Calls for further militarization can only encourage more human and civil rights abuses. HR2119 could be the light at the end of the tunnel that can break the cycle of violence by establishing a credible system of accountability through a complaint process that is accessible to more people.

Civilian review is a well tested form of oversight and is designed to also help restore confidence in law enforcement. Police investigating police has proven to be less than credible in many parts of the country when investigating complaints of abuse. Nowhere has this been found to be more true than in San Diego, where civilian review boards had to be created for both the San Diego police and the San Diego County Sheriff's Department. Civilian review of the Border Patrol would not only complete the circle, but help restore confidence in the complaint process.

APPENDIX 8.—LETTER DATED SEPTEMBER 24, 1993, FROM MARGIE  
McHUGH, EXECUTIVE DIRECTOR, THE NEW YORK IMMIGRATION  
COALITION



**THE NEW YORK IMMIGRATION COALITION**

1011 FIRST AVENUE, 12TH FLOOR  
NEW YORK, NEW YORK 10022  
(212) 371-1000, EXT. 3283

September 24, 1993

Hon. Romano Mazzoli, Chairperson  
Subcommittee on International Law, Immigration and Refugees  
B-370-B Rayburn House Office Building  
Washington, DC 20515

Dear Congressman Mazzoli:

Attached you will find case examples of INS abuse in the New York area which I request be included as part of the public record of your Subcommittee's hearing scheduled for September 29th.

These cases were compiled on short notice over the past several days for submission in support of HR 2119, a bill to create an Immigration Law Enforcement Review Commission. We wanted to give the Subcommittee a sense of the types of abuses which have occurred in our region and which speak to the need for such a Commission. This is not by any means an exhaustive list of cases of abuse in New York; rather, they represent a sampling of cases which could be identified on short notice by attorneys and advocacy groups in our area.

Our Coalition is an umbrella advocacy organization for over seventy groups in New York State that work with immigrants and refugees. Over the years we have been greatly disturbed by reports of INS abuse in our own area, as well as in other parts of the country. We believe the time has come to formally create an independent review commission to investigate alleged cases of INS abuse as proposed in HR 2119.

We respectfully request that the Subcommittee review the attached case records and give its full support to the passage of HR 2119.

Sincerely,

*Margie McHugh*  
Margie McHugh  
Executive Director

Attachments

### Case Examples of INS Abuse in the New York Area

The following reports were gathered from attorneys and immigrants' rights advocates in the New York area over a period of several days in late September. They represent only those cases of abuse that could be quickly identified from pre-existing files. The consensus among attorneys and other advocates was that INS abuse is a major problem. The source of each report is identified following each description.

April 17, 1993: A legal permanent resident of the United States was stopped at JFK Airport by the INS upon returning from a visit to the Dominican Republic. Before leaving the United States, the woman had obtained a stamp from INS that INS representatives said would facilitate her re-entry to the U.S. Despite this precaution, the INS commandeered her passport and Social Security card, telling her that her passport photo didn't look like her. She was taken into custody, handcuffed and detained in a room for three days without a change of clothes or permission to make a telephone call. Family members who were traveling with her when she was detained could not get information about where she was being held from the INS. The woman was not permitted to speak to her family while she was detained. (Dolly Hassan, Citizens Advice Bureau, 718-731-3114)

October, 1992: A legal permanent resident in deportation proceedings was reportedly beaten by two inmates in a bathroom at Brooklyn Correctional Facility while a female guard watched and did nothing to protect him. The man was hit in the head and knocked unconscious for several seconds. Three other guards were in the area but also ignored the man's beating. The man suffered a cut inside his mouth, head trauma and pain on his face and jaw. When he asked to see a doctor, he was told a doctor's visit required one day's notice. The man's attorney visited him in the facility later the same day. After seeing his injuries and hearing his story, she called the detention officer on duty and requested redress and protection for her client. The officer refused to offer assistance and threatened that if the man filed a claim against the prison, the prison would bring charges against him. The man's attorney subsequently wrote to INS requesting an investigation of the incident. (Judy Rabinovitz, ACLU Immigrants' Rights Project, 212-944-9800)

Fall, 1992: A man who was being deported by INS was beaten in the groin when he refused to get on a plane. (The man, a former legal permanent resident of the United States who had lived here for approximately 15 years, was still trying to challenge his deportation in federal court.) Because of his injuries, the man was returned to INS' Varick Street Detention Center, where he was beaten again. The man's injuries required medical treatment for at least two weeks. Shortly thereafter he was deported. Although his attorney filed a damages action against the INS for the injuries, the case was dismissed for lack of personal jurisdiction once the man was deported. (Frank Allen, private attorney, 718-



835-5969)

June, 1992: An immigrant whose belongings were taken from him was beaten up by INS agents at JFK airport. The man's injuries from this beating required his hospitalization at INS' Varick Street Detention Center. The man filed a complaint for the beating. Authorities met with him at Varick Street and took photographs of his injuries, but never returned or spoke with the man again. The man also filed a claim to recover his belongings, but they were never returned. He has since returned to his native country. (private attorney, name withheld by request)

January, 1992: A middle-aged woman from Hong Kong whose visa had expired was apprehended at her home in Brooklyn, New York, by plainclothed INS agents. Although agents flashed badges, they refused to tell the woman their department, despite her repeated questions. The agents forced her into her apartment, went through her possessions, handcuffed her and took her to INS offices at 26 Federal Plaza, leaving her bewildered 15-year-old sons at home alone. During the thirty-minute search of the woman's apartment, INS agents refused to allow the woman's son to leave the apartment. INS agents refused to tell the children where they were taking their mother, who is a single parent. INS agents also refused to tell the woman where they were taking her, despite her repeated questions at her home and during the drive to 26 Federal Plaza. At 26 Federal Plaza, the woman was handcuffed to a chair for several hours while agents apparently took their lunch break. INS officers refused the woman's request to telephone a priest who could contact her three children, one of whom was only 8 years old, and inform them of what had happened to her. The agents did not permit the woman to use a telephone until after she had answered their questions and had signed a statement. No criminal charges were filed against the woman, and no other reason has been presented for singling her out for apprehension at her home. The woman was subsequently detained at INS' Varick Street Detention Center for three nights until she was finally released on \$5000 bond pending deportation proceedings. (Kristina Karpinski, US Catholic Conference Migration & Refugee Service, 718-236-5810)

1991: An INS inspector at 26 Federal Plaza used threatening and abusive language with a female legal permanent resident. He also snapped a mousetrap or similar device in front of the woman's face as an intimidation tactic. (Manny Vargas, Legal Aid Society, 718-722-3100)

April, 1990: A 19-year-old Mexican woman was detained and deported by INS agents when she arrived on a visitor's visa at the Philadelphia airport. INS agents forced her to sign a declaration (written entirely in English, a language she barely understood) stating that she had worked in the United States for \$50 on a previous visit. On both trips to the United States, she was in fact visiting members of a Presbyterian church congregation with whom she first came into

contact when the church pastor stayed at her family's home during a missionary trip to Mexico.

INS officials stopped the young woman at the airport on April 30, 1990, searched her belongings, questioned her for more than three hours until past 1 a.m., refused to allow her to make any phone calls and refused to allow her any contact with a church elder who was at the airport to meet her. The church elder remained in the waiting room throughout the young woman's interrogation. Finally, after 1 a.m., the elder tapped on a window to locate an INS agent who told her that the young woman was being deported.

After INS agents succeeded in getting the young woman to sign the false declaration, they placed her in the custody of a private security guard who took her from the airport, blindfolded and handcuffed her and placed her in a car to a hotel. At the hotel, a security guard shackled the young woman's ankle to a bed for the night.

Attempts by church members to reach INS officials on the night of the young woman's detention were fruitless. Subsequent church member complaints to the INS and a meeting with the INS met with only a statement that the young woman had worked unlawfully in the United States on a prior trip, as evidenced by the signed declaration. (Judy Rabinovitz, ACLU Immigrants' Rights Project, 212-944-9800; Louise Kaminsky, Gladwyne Presbyterian Church, 215-687-8289; see attached declaration of Rosario Bello Escorcia and letter to INS from Howard Friend, pastor of Gladwyne Presbyterian Church.)

Winter, 1989-1990: An Afghan man apprehended and detained upon arrival at JFK Airport was handcuffed to a hotel chair for 10 days while being held by private security guards retained by the INS. (Jeffrey Chase, Lawyers' Committee for Human Rights, 212-629-6170; see attached article from Daily News.)

August 1989: INS officials harassed and beat a Canadian citizen at the Lake Champlain, NY border station. The young man, a student at Universite de Montreal, was on his way to visit New York City and was traveling by bus. All of his papers were in order. He carried \$250 U.S. and the address where he was staying in New York. INS officials called him names, accused him without any basis of having AIDS and of being drunk, strip-searched him and refused him entry into the United States. One agent struck him at the base of his skull, grabbed him by the neck, choked him and slammed his head against a counter repeatedly. A Canadian woman who was being detained for twelve hours at the border on her way back home from New York witnessed the beating and took photographs of the young man's neck.

The next morning, the young man entered the U.S. at the same crossing with no problems. He filed a complaint with the INS that morning for the treatment he received the night before. The story received a lot of press in Canada. The complaint was referred to the FBI. (Judy Rabinovitz, ACLU Immigrants' Rights Project, 212-944-9800; see attached declaration of David Strawczynski and Canadian press clips.)

January, 1989: In a much-publicized case, INS agents at JFK Airport forced a Somali refugee back onto a flight for London before he ever had a chance to apply for asylum. Fearing what would happen were he returned to Somalia, the man slit his wrists and throat in the plane's bathroom. He was hospitalized following the suicide attempt and eventually won asylum in June, 1990. (Jeffrey Chase, Lawyers Committee for Human Rights, 212-629-6170; see attached article from Daily News)

Guernavaca, Morelos, Mexico  
June 29, 1980

Testimony of Rosario Belio Escordia  
Passing through Immigration, April 30, 1980

When I arrived at the airport, it was approximately 10:00 pm. April 30, 1980. When it was my turn to pass through immigration, I showed my passport, my airline ticket, and my tourist card to the immigration officer, who was a Hispanic-looking, short woman. She asked me, in Spanish, "Do you speak English?"

I answered, "A little bit," in Spanish.

She continued in Spanish with the second question, "Where did you come from?"

I told her, "To visit a friend."

Then she asked, "You aren't here to work?"

I said, "No."

Then she asked me to go to the office, where there was another immigration officer, a tall, white man, who spoke no Spanish.

He asked me my name, my age, and my occupation.

I answered in English, "Rosario Belio Escordia, nineteen years old, and I am a student."

Then he asked me again, "Why are you here?"

And I answered, "I come to visit a friend, who is a high school teacher. Her daughter lived with us in Mexico for a while."

Then he said, "Wait here," and he left.

I waited about fifteen minutes. Then he returned with two immigration officers, one a white woman, and the other the same Hispanic-looking woman, who had interviewed me, along with two black men in navy blue uniforms. They began to speak among themselves, and I didn't understand what they said. The white man asked me, "Is someone coming for you?"

I said, "Yes, Mrs. Stevenson. I think she's waiting for me."

Then the two men in blue uniforms began to search my suitcase, my purse, and my camera. They took out all my clothes, my personal letters, and three letters that I was going to mail in the United States. Then the white male official and the Hispanic-looking female official opened my letters and began to read them, one by one. The female official read and translated the letters for the other male official. The other three officials left. The male official then asked me, "Who is Martin?"

I said, "My brother."

He asked, "Is he here in the U.S.?"

I said, "No, he's in Mexico."

After that the female official asked me in Spanish, "Who is Javier?"

I said, "His real name is Howard. He's a pastor of a Presbyterian church, and he was in Mexico for three months with my family."

She asked me again, "Did he get you work?"

I said, "No, why do you say that?"

She said, "Because in this letter it says thank-you for the help you gave my children, Rosario and Martin."



I said to her, "He helped us to get to know more states, like Washington DC, North Carolina, and to meet other families and to go to schools, like high schools and universities. In some classes we spoke Spanish with the students, who were taking these classes. So in this way Javier helped us, to have these experiences, and for that reason my Mom gave thanks to him for his help."

Then she asked me, "Why does it say then in all your letters 'Good Luck?'"

I said "It was the first time I left my home to go to another country."

She said, "Do you know that it's illegal to work in the United States?"

I said, "Yes, I know."

She said, "Do you know that the little pastor (pastorcito) can go to the jail if they discover that he gets for work for people of other countries?"

I said, "Yes, I know, but he didn't get any work for me."

Then she said, "You are going to return to Mexico tomorrow. Do you want to go back?"

I said, "If that's the way it has to be, yes. But can I talk to the person who's waiting for me?"

The male officer said, "No. We have already spoken with this person." He always spoke in English and she in Spanish.

I asked, "What did she say?"

And he said, "She left."

Then he said, "Tell me the truth. It's more convenient for you."

I said, "Which truth?"

Then the female official said, "You lived with Mrs. Stevenson, right?"

I said, "Yes."

She said, "Did she feed you?"

I said, "Yes."

She said, "You didn't help her with anything?"

I said, "A few times we both prepared the meal, and did some things together."

She said, "Did you wash her clothes?"

I said, "They don't wash the clothes here, they just put it in the machine. This isn't work."

She said, "But she paid you for this, right?"

I said, "No."

She said, "O.K. Now you are going to repeat everything you said, because we are going to take a declaration."

I said, "It's O.K."

Both of them left and I waited five minutes. She returned with a sheet of paper, and she asked me again my name, age, and occupation, all in Spanish, and she wrote everything in English. She asked me again if I worked for Mrs. Stevenson.

I said, "No."

And she said, "Tell me the truth."

I replied, "But which truth?"

She said, "You work for Mrs. Stevenson."

I shook my head no, but I said nothing more.

And she wrote, "Yes, she works for Mrs. Stevenson."  
 Then she told me, "How much does she pay you?"  
 I said, "If I don't work for her, how is it that she pays me?  
 Put what ever you want."  
 She said, "Fifty dollars? Twenty? Fifty?"  
 I said, "I don't know how much they pay to work here."  
 She wrote, "They paid fifty dollars." She then said again,  
 "Do you know it's illegal to work in the United States?"  
 And I said, "Yes, I know."

She wrote, "Yes."

The last thing she told me was "Sign the declaration," and I signed.

The male official returned and they talked among themselves. I didn't understand what they said. Then they stamped my visa in my passport, "CANCELLED." I said, "How will be able to return again?"

He replied, "Get another visa."

We passed to another office, and she told me, "Come and sit down."

I said, "Can I make a phone call?"

She said, "You can't make any phone calls. I'm sorry."

Now it was 1:00 am.

We waited half an hour. It was then that a tall, large white woman in a "Security" uniform arrived and they told me, "You are going to go with her."

I said "O.K.."

She said, "Follow me."

I followed her outside and there was a dark-colored car, with another woman inside, in the driver's seat. Before getting in the car, she told me, "Wait." She put a blindfold over my eyes and handcuffs on my hands. She told me to get in the backseat, she got into the front, and we left there.

Approximately twenty minutes later we stopped, and she told me, "Get out." I got out and she took off the blindfold and the handcuffs. I realized we were at a hotel. She told me, "Walk in front of me." I took my suitcase and my bag, and I walked toward the hotel. We walked up to the second floor of the hotel and we entered a room. She asked me, "Do you need to go to the bathroom?"

And I said, "Yes. Just a moment."

After I left the bathroom, I lay down on the bed and she put a handcuff on my ankle, connected to the foot of the bed. She said, "This is for security." She secured the other lock on the door and then made some phone calls. I didn't know to who. She put on the TV and asked me "What is your name" and a few other questions. Then she changed her clothes and went to sleep in the other bed.

At 7:00 in the morning and she told me, "Put on your shoes. We are going to eat breakfast." We had coffee and rolls. Finishing breakfast, we went for my things in the room, and we waited for the car, that was going to pick us up. The car arrived at about 7:30 and we left the hotel for the airport.

Arriving at the airport, we went to check in. She had my ticket and papers. She spoke with the airline agent, and the

agent made copies of the declaration. Then we went to the waiting room and Howard (Javier) was there. He asked me, "How do you feel?"

I said, "I'm O.K.." I couldn't say anymore because I wanted to cry.

He asked me, "How's the family?"

And I told him, "All are fine."

He said, "Your Mom is better?"

I said, "Yes, now she is working."

Then he asked the security person, "What was the problem?"

She said, "I don't know anything."

Then I told Howard to advise my family of the hour that I was going to return to Mexico.

Then he said, "If you want I can do that for you." He asked the woman, "Can she call her family?"

She said, "That's O.K.."

And the three of us went to make the phone call. But the phone didn't work and I couldn't talk to them. Then we returned to the waiting room and Howard told me, "It's sad that you couldn't get through, we were all expecting you."

The time arrived to board the plane, it was about 9:00am. Howard said goodbye. I gave him a few gifts that I had brought for the families that I had known there. The woman delivered me to the door of the plane, gave the flight attendant my papers, left, and I was sent back to Mexico.

*Rosario Bello Escarcia*

Rosario Bello Escarcia

*Letter to District Director*

STATEMENT TO MR. LYLE KARN, DISTRICT DIRECTOR  
 Immigration and Naturalization Service  
 1600 Callowhill Street, Philadelphia

Wednesday, August 15, 1990

Mr. Karn, we appreciate this opportunity to speak personally with you about our concerns surrounding an incident at Philadelphia International Airport involving Rosario Bello, a Mexican citizen who was coming to visit with our parish, and the officials from I.N.S. I want to make it clear at the outset that I do not, and we as a group do not, represent the church or the congregation. But we do come as a group within that congregation. Our Christian faith and our participation in the life of Gladwyne Presbyterian Church have been a dominant influence in shaping our thinking and forming our response to this particular situation. And our feelings and concerns are very strongly held.

I also want you to know that I, personally, appreciate the difficulties and demands of the Immigration and Naturalization Service. I understand from Congressman Lawrence Coughlin's that there are increasing demands in the face of decreasing budget, thus reduced staff at I.N.S.

I assume the basic mandate of the I.N.S. to be two-fold: (a) to be watchful, vigilant and decisive in identifying and responding to any illegal activity at points of entry to our country of persons or materials; that you are a first line of protection for our country and its citizens. And (b) (and perhaps this ought to be named first) to be the first extension of welcome, greeting and hospitality to those who enter our country from another country. The first words of English heard by a visitor are often the words of I.N.S. officials; the first reach of a handshake representing the American people may come from your personnel. Because we believe it to be the nature of our people, we want that welcome to be hearty and warm, and that hospitality to be gracious. Because a basic principle in our American way is often stated as "innocent until proven guilty," we assume that the basic stance and tone of the I.N.S. ought to be one of welcome and hospitality.

As concisely and clearly as I can, let me outline two concerns regarding this incident with Rosario Bello. And we think it is very important to see these as two distinct, though clearly related, concerns.

First, the matter concerning the accusation that Rosario had "worked" during her prior visit here, or was planning to "work" during her anticipated visit. A bit of background first. During the winter of 1989 I took a three month sabbatical leave from my parish to live in Cuernavaca, Mexico. I stayed with the Bello family during that time. Other persons and families from our church have also enjoyed their hospitality. During my stay their two youngest children, Martin and Rosario, expressed a desire to come and visit with our community and parish. Knowing that their family is poor, I indicated that families in our church would gladly pay the cost of that visit. "But Javier," they said (my name in Mexico is Javier), "we did not pay your airfare, so we don't want you to pay ours." "Well," I replied, "maybe you can earn it when you are here." So, when Rosario arrived, we arranged some "work" (and please note I have been putting "work" in quotes) to that end. In each case this was largely "make work,"



"courtesy work," "not-really needed work" to lend a certain dignity to Rosario's stay with us. It was not our plan nor Rosario's assumption that she was here to work. She was here to meet families from our church, to go on trips with families, to visit historic sights in Philadelphia and Washington, to experience the American people and culture.

So, when she was questioned about "working" by the I.N.S. officials when she arrived that night, her confusion is quite understandable. The officials, it seems, came to their own clear conclusion and were quite aggressive, perhaps hostile and overbearing, in interrogating her. It is important to note that that to which she "confessed" is simply not true. Mrs. Stevenson, her host while in our parish, has never paid her any money for any activity (Mrs. Stevenson is with us, and can speak to that fact). It is clear from Rosario's account that she felt frightened, harrassed and intimidated.

During that questioning, Rosario made it clear to the officials that Mrs. Stevenson was waiting for her at the airport. She also told them about me (I am referred to as her "pastorcito," her "little pastor," in an evidently sarcastic tone by one I.N.S. inspector). It would have been easy for them to come out and consult with Mrs. Stevenson (an elder in our church, and no finer person will you find) or to call me.

Yes, she "worked" -- though I continue to put the word in quotes. Yes, we are "guilty" of creating that work. By the letter of the law, both Rosario and those who provided the "work" are guilty. But I presume this is not what the law really has in mind. There is another basic principle in the American system of law, that "the punishment fit the crime." It would seem to us that a clear and vigorous interpretation of the laws, even a crisp reprimand -- to Rosario, to Mrs. Stevenson, to me -- would have been an appropriate, decent, humane and sensitive I.N.S. response. To interrogate her so vigorously, in what seems a harsh and brutal way, then to cancel her visa and send her home, seems unduly severe, a penalty much harsher than the crime.

Second, we want to address the matter of her treatment that evening at the airport by I.N.S. officials. Remembering that our primary source of information is from Rosario, which can be further amplified I am sure by your records from that evening, we believe that the I.N.S. behavior was unduly harsh, quite inappropriate, and perhaps illegal. The list of concerns is familiar to you from our correspondence: the harsh, intimidating interrogation of which I have spoken; her not being allowed to make a phone call; the blindfolding and handcuffing; the ankle-cuffing to her bed; failure to contact her family in Mexico, so they could make arrangements to meet her at the airport; the unavailability of I.N.S. on any listed phone line that night when we tried to call and inquire.

Worthy of note, though of lesser concern compared to the treatment of Rosario, was the treatment of Mrs. Stevenson as she waited. Early in the interrogation someone came out to tell her that there would be extended questioning. Then Mrs. Stevenson waited for an hour and a half until 1:00 a.m., when it appeared that all personnel had left. She finally tapped on a window, to be told in a rather terse manner, that Rosario was being refused entry and would return home. She left the airport confused, frightened and upset.

Mr. Karn, your letter in response to Mr. Moriarty's letter, as well as your letter to Betty Jane Dunn of Congressman Coughlin's office, confused us. Having acknowledged the concerns we have raised, you end your letter by saying that you "believe that the actions taken by Immigration Inspectors of this Service at the Philadelphia International Airport during the inspection of Ms. Bello were entirely proper and legal." Which seemed to leave us with one of two conclusions: either the practices named above are "proper and legal" in your mind, or, you are suggesting that Ms. Bello is lying to us.

In light of the above, we would like to make two requests of you, in your position as District Director: (a) That you do what you and your office are able to reinstate Ms. Bello's tourist visa. We understand from Congressman's Coughlin's office that she may apply for a new visa, but the fact that she has this incident on her record would make the issuing of that new visa most unlikely. If nothing else, in light of the fact that it is we at the church who the more "guilty" than she, she receive this consideration. And (b) That you pursue assertively an investigation of the alleged treatment of Ms. Bello. We would ask that you advise us by letter of the outcome of that investigation, and perhaps at that time schedule a second meeting with us. Ms. Dunn told us that investigation proceedings can be initiated by the congressman's office in Washington, but that we ought to try to settle the matter here in Philadelphia. That is our desire. We view these as matters of grave concern that warrant a significant response. Because I.N.S. officials at all points of entry represent the American people, must uphold the laws of the land, and represent the heart and spirit of the people, these allegations demand thorough review. We do not want other visitors to our country to receive this kind of treatment.

A final note. Our church -- in the spirit both of our American heritage and faith commitment -- has vigorously pursued avenues of "people to people diplomacy" in the past five years. Twenty three of our church members have been on a mission trip to Port au Prince, Haiti; another thirty on mission trips to Mexico; a choir contingent of fifty-three persons toured Romania, Austria and the Soviet Union last summer; eight different delegates have gone on three different friendship delegations to the Soviet Union. In turn, we have welcomed visitors from Eastern Europe, the Soviet Union, Haiti, Nicaragua, Jamaica, Africa and Mexico.

Mr. Karn, thank you for your time. And thank you, as well, to Betty Jane Dunn representing Congressman Coughlin's office. We want to work cooperatively with you on this matter.

Respectfully submitted,

Howard E. Friend, Jr.  
Pastor

DEAR MRS RADINOVITZ THE FOLLOWING  
IS THE OFFICIAL COMPLAINT I GAVE TO THE  
SHIFT SUPERVISOR THE MORNING AFTER THE ASSAULT.  
THE FIRST PAGE IS HOWEVER AN AMENDMENT I  
MADE 2 DAYS FOLLOWING, TO CLARIFY CERTAIN  
DETAILS. THE QUOTES MIGHT NOT BE TO THE  
EXACT WORD, HOWEVER THEY ARE VERY CLOSE.

ON THE 29<sup>TH</sup> OF AUGUST, 1989, AT 11:30 P.M., I BOARDED A GREYHOUND BUS FOR MEXICAL, HEADING FOR NEW YORK CITY. AT 7:00:15 A.M. ON THE 30<sup>TH</sup>, WE ARRIVED AT THE BORDER. WE WERE ASKED TO EXIT THE BUS, AND PLACE OUR BELONGINGS ALONGSIDE IT AS THE VARIOUS IMMIGRATION AND CUSTOMS FORMALITIES WENT UNDER WAY, EVERYBODY WAITING IN LINE WAS STRUCK BY THE VERY RUDE, OVER-AUTHORITATIVE, AND INSULTING WAY THE FIRST PEOPLE TO GET SERVED WERE BEING TREATED. WHEN ONE MAN TOLD THE OFFICER HE WAS FROM EL SALVADOR, THE OFFICER SNAPPED: "YOU A DRUG DEALER?" THE OFFICER CONTINUED HARBORING THE SURPRISED MAN; "WELL, ARE YOU?" I'M TALKING TO YOU!" "I THOUGHT EVERYONE FROM EL SALVADOR WAS A DRUG DEALER!" THE MAN WAS SUBSEQUENTLY REUSED ADMISSI-  
ON BECAUSE OF AN ALLEGED PROBLEM WITH HIS VISA, A PROBLEM HE CLAIMED WAS FALSIFIED. UNFORTUNATELY I DID NOT HAVE THE IDEA TO GET HIS NAME OR ADDRESS. AS I APPROACHED, THE CONVERSATION GOES SOMEWHAT AS FOLLOWS: "WHY YOU GOING TO NEW YORK?" "WHEN WERE YOU LAST ARRESTED?" HE THEN PROCEEDED TO SAY THAT I WAS "FUCKED UP ON DRUGS AND ALCOHOL." I DENIED THIS AND SAID THAT I'D BE GLAD TO TAKE A BREATHALIZER TEST. HE IGNORED ME. I DO NOT HAVE THE NAME OF THIS OFFICER (THE SAME ONE WHO DEALT WITH THE SALVADOREAN) HOWEVER HIS DESCRIPTION IS AS FOLLOWS: I.D. #122, AVERAGE HEIGHT (5'8"), WITH A MUSTACHE AND GLASSES, WEARING A WHITE SHIRT WITH A SHERIFF BADGE ON HIS BELT. WHEN, AFTER A FEW MORE MINUTES OF BEING LURED DOWN UPON, INSULTED, AND STAFFED AT MISTAKEFULLY, I ASKED IF I WOULD MISS MY BUS, HE SAID "THAT'S MY DECISION NOT YOURS. GO IT!!!" ANOTHER OFFICER THEN APPROACHED AND FOR NO REASON AT ALL CALLED ME AN "ASS HOLE" AND ASKED ME (OR SAID) (THAT) IF I HAD AN ATTITUDE PROBLEM. THIS LAST OFFICER, WHO WAS →



LATER TO STRIKE THE BACK OF MY NECK, ~~AND~~ AND CHOKED ME, SLAMMING MY HEAD ON THE COUNTER, ~~AND~~ ~~AND~~, I ~~DO NOT KNOW HIS~~ HE CAN NOT IDENTIFY BY NAME OR I.D. NUMBER, HOWEVER HE IS VERY TALL, ~ (6'6"), HAS A MUSTACHE, WEARS SUNGLASSES, AND HAS A SOUTHERN? ACCENT. AFTER INSULTING ME SOME MORE (I REMAINED SILENT, ANSWERING IN A YES/NO MANNER), BOTH OF THE AFOREMENTIONED OFFICERS TOLD ME TO GO OUTSIDE AND GET MY BAG. THEY FOLLOWED CLOSE BEHIND, LAUGHING WHILE MENTIONING HOW EASY AND FUN IT WOULD BE TO "EMPTY A FEW ROUNDS INTO HIM AT A SHORT DISTANCE". I PICKED UP MY BAG, CAME BACK INSIDE, AND THEY PROCEEDED TO SEARCH IT. WHEN THEY FOUND A VIAL OF ASPIRIN AND PENICILLIN (THE PREVIOUS WEEK I HAD BEEN ILL WITH A VIRAL INFECTION AND TO BE SURE I BROUGHT ~~THE~~ <sup>THEM</sup> ALONG IN CASE I NEEDED THEM IN N.Y.) THE OFFICER WITH I.D. # 122 PROCEEDED TO SAY IN A VERY ARROGANT AND PROVOCATIVE MANNER "YOU GOT AIDS BOY?" OVER AND OVER, EVEN THOUGH I ASSURED HIM <sup>I DIDN'T</sup> THE FIRST TIME HE ASKED. THIS PENICILLIN WAS PRESCRIBED FOR MY FATHER, A FACT WHICH RESULTED IN MY NOT BEING ABLE TO ENTER THE U.S, SOMETHING I WAS NOT EVEN REMOTELY AWARE OF. AS THE CONTENTS OF MY BAG WERE EMPTIED, ANOTHER OFFICER (WHOSE NAME AND DESCRIPTION I ~~AM NOT~~ <sup>DO NOT</sup> REMEMBER) FOUND A SMALL SWISS ARMY POCKETKNIFE, WITH A 2" BLADE, A CURKSREW, AND A CAN OPENER. HE OPENED

THE BLADE AND PLACED IT BACK INSIDE THE BAG. HE THEN PUT HIS HAND BACK IN AND SAID TO ONE OF THE ~~OF~~ OTHER OFFICERS - "OOOH, IF I CUT MY HAND ON THIS, I'D GET REAL MAD AT THAT ASSHOLE, I'D BEAT HIM!"

AFTER MORE (5 MIN) OF INSULT AND HUMILIATION (OFFICER # 122 WAS CONSTANTLY ACCUSING ME OF BEING DRUNK, AND WAS CIRCLING ME (HE CAME ACROSS TO THE OTHER SIDE OF THE COUNTER) IN A MENACING MANNER. THEY TOOK ME ~~TO~~ (# 122 AND THE TALL OFFICER WITH SUNGLASSES) TO ~~THE~~ A SMALL BACK ROOM AFTER FAILING TO FIND ANYTHING INCrimINATING IN THE BAG. BEFORE ENTERING, THEY SAID SOMETHING TO THE EXTENT THAT AFTER THEY WERE FINISHED WITH ME, I'D BE IN A DAMNED SORRY STATE, AND IN SUBDUED TONES CALLED ME AN "ASS HOLE" WITH AN ATTITUDE PROBLEM. I STRIPPED AND AS THEY WERE STANDING THERE, SMIRKS APPEARED ON THEIR FACES FROM TIME TO TIME. AFTER THEY FOUND NOTHING, AND I CAME WITH THEM BACK TO THE COUNTER, # 122 SAID "IN OUR PROFESSIONAL OPINION, YOU'RE NOT A DESIRABLE CANDIDATE FOR ENTRY INTO THE U.S." I RESPONDED IN A RATHER DRY TONE - "SIR, MY PASSPORT IS IN ORDER, I HAVE AN ADDRESS IN NEW YORK, A PERMANENT ADDRESS IN MONTREAL, 250 US \$, A RETURN BUS TICKET AND A CONVENIENCE BANK CARD IN CASE I RUN OUT OF MONEY, AND SINCE YOU FOUND NO NARCOTICS OR ANYTHING ELSE ILLEGAL ON ME EXCEPT <sup>FOR</sup> THE PENCIL IN NOT BEING IN MY NAME, BUT MY FATHER'S, I DON'T UNDERSTAND WHY YOU WOULDN'T LET ME IN. THE TALL OFFICER

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WITH SUNGLASSES AND A MUSTACHE, THEN LOOKED DOWN AT ME AND SAID SOMETHING LIKE "YOU DONT TALK BACK TO US BOY, OR ~~OR~~ I'LL THROW YOU <sup>RIGHT</sup> THROUGH THAT PLATE GLASS WINDOW BEHIND YOU" TO WHICH I RESPONDED "IF YOU WANT A LAWSUIT". HE THEN SAID SOMETHING UNDER HIS BREATH LIKE "SON OF A BITCH", AND STARTED MAKING HIS WAY AROUND THE COUNTER - I BELIEVE IT WAS RIGHT IN FRONT OF THE BLUE ~~AND~~ <sup>AND</sup> WHITE IMMIGRATION SIGN. AS I WAS PACKING MY BAG, # 122 SAID "THAT'S IT," WITH A SMILE ON HIS FACE. OUT OF NOWHERE I RECEIVED A POWERFUL BLOW (I BELIEVE HE ~~HIT~~ SMASHED ME WITH HIS FOREARM) TO THE BACK OF THE NECK, ~~RIGHT BELOW~~ AT THE POINT WHERE ~~THE~~ <sup>THE</sup> SPINE MEETS THE SKULL. HE THEN GRABBED MY NECK, CHOKING ME, LIFTED ME OFF MY FEET, AND ON TO THE COUNTER, AND STARTED SMASHING MY HEAD VIOLENTLY AGAINST THE ~~COUNTER~~ ~~IN~~ COUNTER BY PUSHING MY NECK, (STILL CHOKING ME) UP AND DOWN, WHILE SAYING SOMETHING LIKE "DONT TALK BACK ASS HOLE, AND SAY YOU'RE SORRY!!!" I QUICKLY SAID (AS BEST I COULD) I WAS SORRY, BUT HE KEPT CHOKING ME FOR AT LEAST 20 SECONDS, CONTINUOUSLY SMASHING THE BACK OF MY HEAD AGAINST THE COUNTER, WHILE THE OTHER OFFICERS SURROUNDING ME ~~WERE~~ HAD SMIRKS ON THEIR FACES. HE LET ME GO, AND I STARTED GASPING FOR BREATH. HE THEN THREATENED TO THROW ME IN JAIL "FOR TONIGHT." I QUICKLY PACKED

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THE REMAINDER OF MY BELONGINGS, AND WAS TOLD AGAIN THAT I WAS REFUSED ADMISSION BECAUSE "IN OUR PROFESSIONAL JUDGEMENT IF YOU'RE NOT A DESIRABLE CANDIDATE?, AND YOU'VE GOT AN ATTITUDE PROBLEM." I AM WRITING THIS DESCRIPTION ALMOST TWELVE HOURS AFTER THE ASSAULT TOOK PLACE, AND I STILL HAVE RED WELTS ON MY NECK. I AM A STUDENT, HAVE NEVER BEEN IN TROUBLE WITH THE LAW, OR IMMIGRATION AUTHORITIES, HAVE A VALID PASSPORT, 250 \$ U.S., IN ADDRESS IN NEW YORK WHERE I WAS PLANNING TO STAY, AND A RETURN BUS TICKET TO MONTREAL. NOTHING ILLEGAL WAS FOUND ON MY BODY EXCEPT FOR THE PENICILLIN, IN MY FATHER'S NAME, WHICH I WAS USING TO TREAT ILLNESS. I WAS NOT IN THE LEAST BIT AWARE THAT IT WAS ILLEGAL TO ENTER THE STATES WITH A PRESCRIPTION DRUG SUCH AS PENICILLIN, ~~AND~~ NOT BEING MADE OUT IN MY NAME. HAD I KNOWN, I WOULD NOT HAVE IT. ~~MY PARENT~~ ~~WIFE HAS BEEN TAKEN THAT~~, I HAVE BEEN INSULTED, AND HUMILIATED, NOT TO MENTION ASSAULTED. I HAVE A WITNESS MORE THAN WILLING TO TESTIFY TO THE BRUTALITY WITNESSED ON THE 19<sup>TH</sup> OF AUGUST AT 24-15-10



IN THE MORNING. I ALSO HAVE HAD PICTURES  
TAKEN 2 HOURS AFTER THE ASSAULT, SHOWING THE  
DEEP MARKS ON MY THROAT.

30<sup>TH</sup> AUGUST 1989.

*Daniel Stranitz*

PASSPORT NO. LG150673

CANADIAN CITIZEN.

# Insulté et battu à un poste frontière, un étudiant montréalais porte plainte

ENRÈS GRUDA

Un étudiant montréalais a porté plainte auprès des autorités américaines pour avoir été insulté et battu, la semaine dernière, au poste frontalier de Champlain.

David Strawczynski, 21 ans, affirme qu'après l'avoir traité de « ass hole » et l'avoir fait subir une fouille en règle, un agent des douanes américaines lui a asséné un coup dans le nuque, l'a saisi par la gorge, puis a sauvagement cogné sa tête contre un comptoir.

Les douaniers lui avaient auparavant confisqué un canif suisse et une bouteille de comprimés de nicotille.

Une Américaine qui a assisté à la scène alors qu'elle attendait de pouvoir être admise au Canada a conté qu'après avoir été frappée, Strawczynski s'est écroulé sur le sol.

« J'étais terriblement choquée, n'avais jamais rien vu de pareil », a relaté Mme Raycine Lavan, jointe cette semaine à Ottawa.

Mme Lavan, qui a d'ailleurs pris des photos du jeune homme montrant les traces de l'empoignade dans son cou, a elle aussi porté plainte contre les autorités américaines de cette violente agression.

Les responsables du poste frontalier de Champlain ont refusé de tout commentaire sur cette histoire. Même silence à la direction régionale des Affaires internationales des douanes américaines, à Boston, qui a été dans un premier temps saisie du dossier.

Le département de la Justice, lui, a depuis pris l'enquête en main, n'a pas retourné les appels à La Presse.

Dans la plainte qu'il a déposée à la direction du poste douanier de Champlain, David Strawczynski raconte avoir pris l'autobus à Montréal, dans la nuit du 29 au 30 août dernier, en di-



David Strawczynski montre comment un agent des douanes américaines l'a empoigné à la gorge, avant de le jeter sur un comptoir du poste frontalier de Champlain.

PHOTO PHOTO RENE PICARD - La Presse

rection de New York, où il comptait passer de courtes vacances avant de reprendre ses cours à l'université de Montréal.

« Nous sommes arrivés à la frontière vers minuit et quart, et tous les passagers ont été priés de descendre et de placer leurs bagages à côté de l'autobus », relate-t-il.

« Are you a drug dealer? »

Rencontré hier à son domicile, à Montréal, le jeune homme a raconté qu'il n'avait pas été seul à souffrir de l'attitude des agents des douanes et de l'immigration américaine.

« Ils étaient très provocants et insultants, surtout envers les Noirs et les Hispano-Américains », a dit M. Strawczynski.

Un des agents, interrogeant un ressortissant salvadorien, lui aurait demandé: « Êtes-vous un trafiquant de drogue? Je croyais que tous les Salvadoriens étaient des trafiquants... »

Interrogé à son tour, l'étudiant montréalais a d'abord dû s'expliquer sur les raisons de son voyage à New York.

Très vite, l'interrogatoire s'est corsé. « Un agent, portant des lunettes et une moustache, m'a demandé à quand remontait ma dernière arrestation. Je lui ai dit que je n'avais jamais été arrêté, et il m'a alors accusé d'avoir pris de la drogue ou de l'alcool. »

« Je lui ai répondu que c'était faux, et que j'étais prêt à subir un alcootest. Il a ignoré ma suggestion, et lorsque j'ai demandé poli-

ment si je n'allais pas rater mon autobus, il m'a dit: 'Ça, c'est ma décision, pas la tienne, compris?'

Dans sa déposition, le jeune étudiant raconte qu'un autre agent, un gaillard de plus de 60 ans, s'est alors approché de lui le traitant de «ass hole», l'accusant d'avoir des «problèmes de comportement» et lui ordonnant d'aller chercher ses bagages.

«En marchant vers l'autobus j'ai entendu les deux agents plaisanter dans mon dos. Ils se disaient en riant combien ce serait facile et drôle de me tirer des sus.»

Dans le sac à dos laissé le long de l'autobus, les agents ont découvert leurs deux «pièces à conviction»: une bouteille de pénicilline et un canif.

«You got AIDS, boy?», auraient-ils alors lancé, selon la déposition du jeune homme.

«N'ayant trouvé rien de plus incriminant, les agents m'ont conduit pour quelques minutes dans une petite pièce isolée, où j'ai été déshabillé et fouillé. Comme ils ne trouvaient toujours rien, ils m'ont dit que lorsqu'il en auraient fini avec moi, je serais dans un piteux état», pour suit la déposition.

La pénicilline avait été prescrite non pas au nom de M. Strawczynski, mais au nom de son père. C'est ce prétexte que les agents ont saisi pour lui refuser l'entrée aux États-Unis, en ajoutant que le jeune homme souffrait de «problèmes de comportement.»

«J'ai alors dit, plutôt sèche ment, que j'avais de l'argent, une adresse à New York et un billet

de retour pour le Canada, et que si j'avais su que la pénicilline allait me causer des problèmes, je ne l'aurais pas apportée.»

C'est là, d'après David Strawczynski, que les choses se sont vraiment gâtées. «Ils m'ont dit de ne plus leur parler sur ce ton, sinon ils allaient me faire passer à travers la vitre.»

«J'ai répondu: 'Si vous voulez une poursuite...' Après ça l'un des agents a marmonné quelque chose comme *son of a bitch*, et j'ai commencé à marcher vers moi en faisant le tour du comptoir.»

C'est au moment où il a commencé à ranger ses effets dans son sac à dos que M. Strawczynski dit avoir été frappé au cou puis pris par la gorge et projeté contre le comptoir.

«Nous nous trouvions alors dans la salle d'attente, où il avait encore des gens, mais je n'en voyais pas parce que j'étais entouré par six ou sept agents», s'explique-t-il.

En plus de la plainte logée auprès des autorités américaines, David Strawczynski a maintenu l'intention d'intenter une poursuite contre tous les agents qui ont assisté à la scène sans rien faire pour le protéger.

«Je veux empêcher que de tels incidents ne se reproduisent», dit-il expliqué.

Le jeune homme a passé la nuit au poste frontalier, attendant l'arrivée des superviseurs des douanes américaines, pour se plaindre de l'incident. «Les superviseurs ont traité ma plainte avec sérieux, et ils m'ont donné l'autorisation d'entrer aux États-Unis... »

# Woman claims U.S. border guard beat man

By Bert Hill  
Citizen staff writer

U.S. immigration authorities are investigating an Ottawa woman's charge that she saw a border guard beat a young Canadian at a New York border crossing earlier this week.

Raylene Lavan, 29, said she witnessed a U.S. immigration guard grab David Strawczynski, of Montreal, by the throat and bang his head repeatedly on a counter.

"They had found some penicillin capsules in his bag, but he didn't look to be stoned, just really tired," The guard asked if he had AIDS. I believe he said 'why are you harassing me?'

"The guard said 'Don't ever talk to me like that.' He grabbed him by the throat, lifted and pushed him backwards over a counter. He hit his head on the counter two or three times."

The alleged incident took place at the Champlain, N.Y., border station about 100 kilometres south of Montreal.

U.S. immigration district director Jack Bolger said: "We are obviously aware the allegation is very serious and we are going to conduct a very thorough investigation."

He said investigators from the U.S. justice department will be



Lavan, left, took photo of Strawczynski after attack

—Raylene Lavan photos

brought in if necessary. Lavan said the choking left Strawczynski breathless and with a flushed face. A picture she took three hours later shows a dark red mark at the base of his throat.

Strawczynski filed a complaint and Lavan was interviewed by a U.S. immigration supervisor Thursday.

Strawczynski's parents, con-

tacted at their home in Montreal Thursday night, said they spoke to their son Wednesday night. David told them "a lot has happened today" but didn't explain, said his mother, Hanna.

"I know there is no reason why they should have delayed him at the border and certainly he would give them no reason to mistreat him," she said.

David's father, Oscar, said an

official from a customs office in Boston phoned Wednesday asking for David and informing them that David had filed a complaint, but didn't explain further.

The Strawczynskis said David is expected back in Montreal early next week and cannot be reached in New York.

The incident was the low point of a harrowing night in which Lavan spent eight hours explaining to Canadian and U.S. immigration officials why she making the trip from New York City to Ottawa.

A professional singer based in New York, Lavan had left for Canada with a return train ticket and about \$5 U.S. Her husband, Steve Groves, an Ottawa musician, and their daughter Raven, 2, were expecting her in Ottawa about midnight Tuesday.

Canadian immigration officials took exception to the small amount of cash in her wallet and sent her back to U.S. immigration for further questioning.

She couldn't reach Groves by phone because he was waiting for her at the Ottawa bus station.

It was while she was in the U.S. immigration office that she witnessed the incident. Lavan finally arrived in Ottawa, shocked and exhausted, more than 12 hours late.



# Man beaten at border: Witness

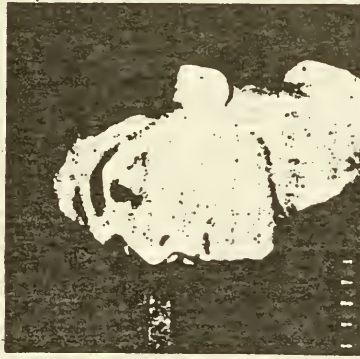
by Laurie Giffen  
Montreal Daily News

**THE MOTHER** of a 21-year-old Montreal man who was allegedly beaten by a border guard at the Champlain, N.Y., border-crossing earlier this week is shocked that her son was treated so badly.

"It is animal treatment of a totally uneducated young man," Henna Strawynski said in a telephone interview with the *Daily News* yesterday.

"It is absolutely shocking."

U.S. immigration officials are investigating the case after an Ottawa woman claimed she witnessed the attack.



David Strawynski in photo taken at border.

Raylene Lavan, 29, the throat and bang his head repeatedly on the immigration guard grab counster. "They found some

penicillin capsules in his bag but he didn't look stoned, just really tired," she said.

"The guard said 'don't ever talk to me like that.' He grabbed him by the throat, lifted and pushed him backwards over a counter and hit his head on the counter two or three times."

"I was never so appalled in all my life."

Strawynski's mother, who's a practicing physician, said she gave him the penicillin because he had a sore throat.

U.S. immigration officials found the antibiotic in the young man's bag.

"I prescribed the pills to him and told him to take them just in

case his throat started to irritate him again," she said.

The attack against Strawynski reportedly took place Wednesday morning at the Champlain, N.Y., border station, located about 80 kilometres south of Montreal.

Strawynski said she talked to her son Wednesday afternoon but he did not mention the incident.

"When he called he said something had happened but he said

we would discuss it when he gets back," she said.

"I think he didn't want me to worry," Lavan said the choking left Strawynski breathless and with a flushed face. A picture she took three hours after the incident occurred shows a dark red mark at the base of his throat.

Strawynski has filed a complaint and Lavan was interviewed by a U.S. immigration supervisor Thursday.

"We are obviously aware the allegation is very serious," said Jack Bolger, U.S. immigration district director.

"And we are going to conduct a very thorough investigation."

He said investigators from the U.S. justice department will be brought in if necessary.

Strawynski's mother said David, a Université de Montréal student, is expected back from New York early next week.

— With CP files

By KEVIN MCCOY

## APPENDIX 9.—STATEMENT OF ROGELIO T. NUNEZ, EXECUTIVE DIRECTOR, CASA DE PROYECTO LIBERTAD

My name is Rogelio T. Nunez and I am the Executive Director of Casa de Proyecto Libertad, a non-profit legal aid and advocacy office, which has been in existence since 1981. I have been affiliated with this agency since May Of 1988. For the past 12 years, this office, which employs 12 staff persons, has represented and assisted nearly 20,000 persons in need of legal counseling or formal representation in the Executive Office for Immigration Review, commonly known as the Immigration Court. Our legal aid work is performed within the parameters of Title 8 of the Code of Federal Regulations, and our office has received formal recognition by the Board of Immigration Appeals.

It is important for us that you, the honorable members of the Subcommittee, read this statement. The immigrant community, as well as United States citizens, need an avenue for voicing complaints that will be investigated thoroughly and some report of the findings being made known to those filing the complaint. Presently, there does not exist such an agency.

The majority of our clients, who represent a broad range of nationalities, are detained by the Immigration and Naturalization Service at the Port Isabel Service Processing Center in Los Fresnos, Texas. While our staff works with all aspects of immigration law, most of our case work over the past 12 years has involved assisting and representing those who are eligible for political asylum in this country. We also seek to educate the community about their rights, benefits, and remedies as provided by the Constitution and the immigration laws of this country. In so doing, we seek to help preserve their exercise of due process rights.

In the course of interviewing thousands of persons a year, we have received countless complaints by both detained and non-detained persons about mistreatment and abuse by U.S. Border Patrol and INS personnel. The complaints of abuse can be broken down into the following categories:

- >physical abuse during the arrest procedure and inside detention;
- >denial of access to legal counsel;
- >inadequate and negligent medical care in detention;
- >violations of federal regulations during arrest procedure;
- >transfer of clients to other facilities without advising counsel;
- >negligent and sometimes abusive foster care for minors in the in the custody of the INS.

When our office staff learns of incidents of abuse, we obtain sworn testimony from the person who declares to have been abused by the Border Patrol or the INS. Some of the abuse cases for which we have filed formal complaints include such incidents as: i) a detainee suffering personal bodily injury by a Border Patrol/INS guard; ii) physical injury and verbal harassment by Border Patrol personnel during the process of arrest; iii) near death of a detainee due to acute kidney failure. Many undocumented persons, as well as those who are in deportation or exclusion proceedings, are fearful of filing a formal complaints about Border Patrol mistreatment.

After obtaining sworn testimony by the person who alleges abuse by the Border Patrol or INS our staff routinely mails the affidavit to the local Office of Inspector General in McAllen, Texas, the FBI, and the Civil Rights Division of the Department of Justice. We also advise local immigration officials about the particular incident. Officials from the local INS District Office, as well as the Border Patrol sector, have traditionally been either unresponsive to our complaints, or have denied that the incident occurred. Filing complaints to the Office of Inspector General (OIG) never achieves any kind of resultant response. We are never advised if an investigation is being performed, nor are we ever advised of the OIG's findings following an investigation. Immigration authorities appear unresponsive to complaints filed against particular officers who are accused of showing abusive and even violent behavior toward detainees in INS detention.

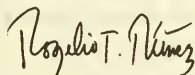


I strongly urge the Subcommittee to consider establishing an independent review commission which would review complaints without bias or prejudice. The establishment of a neutral independent commission would benefit the community which up until now has not had much recourse. Such a commission would more effectively investigate abuse complaints because it would achieve some completion by providing a full report of the outcome of the investigation. This commission would thereby assist in assuring accountability on the part of the U. S. Border Patrol and INS personnel.

We thank you for your work and your interest in this matter. Please feel free to contact this office if you have any questions or seek further information.

Respectfully submitted,

Date: 9/27/93



Rogelio T. Nunez  
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(210) 425-9552

APPENDIX 10.—STATEMENT OF HON. ED PASTOR, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF ARIZONA

Distinguished Chairman and Members of the Subcommittee, I applaud your efforts to conduct a hearing on H.R. 2119, and I welcome the opportunity to testify on its behalf.

As a Representative from the state of Arizona, I have received a number of reports of United States Border Patrol abuse against individuals of Latino looking descent. Throughout our state, reports of civil rights violations, destruction of property and physical abuse have been widespread. The most disturbing aspect of these alleged abuses, however, is that they have not been adequately addressed by the internal review process of the Immigration and Naturalization Service. I have received numerous letters from constituents questioning the thoroughness and fairness of investigations and over-sight procedures in cases of alleged abuse by Border Patrol officials. The system for investigating complaints is ineffectual. Instances of Border Patrol agents kicking-in doors, breaking windows and forcing their way into homes without permission by the residents or search warrants have occurred. Students complaining of being chased onto school campuses and through school cafeterias has been reported. I would like to share with you one story of the ordeal that two young women from my district

experienced.

On February 18, 1992, two young girls, ages 13 and 15, were apprehended by a Border Patrol agent. According to the girls, the agent drove them around a neighborhood for several hours and threatened to send them to a "crazy house" in California if they did not reveal their home address. Eventually, the young girls were taken to the Phoenix INS Detention Center. The agent's report stated that he apprehended these girls because they appeared to be undocumented. No individual under any circumstances, whether a citizen or an immigrant, deserves to be treated in this manner.

I also understand that Border Patrol agents face an increasingly challenging task along our border areas. Due to a lack of personnel and equipment, all too often agents are stretched to their limits as they are given the impossible mission of enforcing employer sanctions, assisting to control drug trafficking, and enforcing immigration laws.

Mr. Chairman and Members of the subcommittee, Congressman Xavier Beccera has introduced legislation which addresses many of my concerns with the internal review process of the INS in such cases. H.R. 2119 proposes to create an independent review commission that would be responsible for investigating complaints against the Border Patrol or Customs Service. The Commission would also provide recommendations for disciplinary actions against agents found guilty of civil rights abuses. The Immigration Enforcement Review Commission provides an avenue by which legitimate complaints of abuse can be evaluated in a fair and objective manner for all parties involved.

Mr. Chairman I urge you and your colleagues on this esteemed

subcommittee to seriously consider this bill and to favorably report it or similar legislation for the consideration of the House. We need to restore community confidence in our law enforcement agencies and no where is this fact more apparent than with the Border Patrol.

Thank you for providing me the opportunity to submit this statement.



## APPENDIX 11.—STATEMENT OF STEPHEN ROSENBAUM, CALIFORNIA RURAL LEGAL ASSISTANCE FOUNDATION

### CIVILIAN REVIEW IS NEEDED TO MONITOR UNCIVIL ACTS

As a private, non-profit corporation serving the rural poor and farmworkers, California Rural Legal Assistance (CRLA) Foundation has provided technical assistance, research and advocacy to rural community agencies, organizations and attorneys for over a decade. The Foundation's Immigration Project has been a clearinghouse for information about immigration reform. We have also conducted training workshops for would-be immigrants and community leaders in numerous California communities on a variety of legal procedures.

We have been monitoring misconduct by immigration officials for a number of years: The Law Offices of CRLA have filed civil suits against the Border Patrol and the Immigration & Naturalization Service (INS) for damages and equitable relief in connection with sweeps, surveys and operations at workplaces, homes and businesses in northern California and have lodged complaints with the Office of Professional Responsibility and Inspector General concerning individual cases of employee misconduct.

CRLA has also petitioned the OAS human rights commission for redress of violations of treaties and customary international law stemming from INS raids or acts of violence. As well, CRLA Foundation commented just last year on INS' proposed rules regarding INS officers' powers of detention and interrogation; the use of force, including deadly force and firearms; and the procedures for expediting the review of complaints of officer misconduct.

CRLA Foundation supports H.R. 2119, introduced by Representative Xavier Becerra and co-sponsored by Representatives Edwards, Gutierrez, Pastor, Serrano and Torres. We believe the proposed legislation establishing an immigration enforcement review commission is sufficiently broad to allow the commission to develop appropriate procedures, yet particular in its attention to functions that will ultimately make for an effective oversight body that has the confidence of complainants and immigration officers alike. We note that the bill incorporates many of the suggestions made over the years by such groups as the American Friends Service Committee (AFSC), Americas Watch, National Lawyers Guild and our own organization. Both the public and the INS would be well served by strengthening the procedures by which allegations of violations of standards of conduct by INS employees are received, investigated and resolved, bringing the review process up to the standard of modern police practices.

In particular, we believe a successful commission requires aggressive outreach, confidentiality for complainants, procedures that will keep the parties apprised of the process, disciplinary recommendations, tracking of repeat offenders and cooperation from immigration enforcement officials.

#### **THE ACTS OF VIOLENCE AND OTHER MISCONDUCT ARE WELL DOCUMENTED**

To many Americans -- and would-be Americans -- the Border Patrol is the very symbol of immigration law enforcement. In the words of one congressional staffer, the Patrol "commands public attention because it performs a visible and demanding task." In

addition to all the other reasons, as the highest funded unit of an already well-endowed enforcement apparatus and an increasingly militarized force, the Border Patrol's actions warrant heightened public scrutiny.

Two prominent non-governmental organizations, the AFSC Immigration Law Enforcement Monitoring Project and Americas Watch, both issued reports in recent years which chronicle "pervasive" INS misconduct in California, Arizona, New Mexico and Texas during the arrest and detention of undocumented immigrants. Americas Watch also reported on problems with the current Office of Inspector General and its overlapping jurisdiction with the Office of Professional Responsibility. In an earlier report, Mexico's National Commission for Human Rights also documented cases of "mistreatment or abuse" by various U.S. law enforcement officers, mainly INS or customs agents.

Not all complaints are lodged by undocumented aliens. One immigrants' rights advocate, testifying last month before a subcommittee of the House Committee on Government Operations, estimated that of the abuses reported to AFSC and Americas Watch, almost half involved U.S. citizens, lawful residents or holders of passports or visas. Moreover, some of the complaints of misconduct concern bad manners with the public rather than brutality.

In 1990, former INS Commissioner Gene McNary acknowledged that "[e]scalating violence on the southern border has resulted in injuries and even deaths" and that his agency would "begin immediately to determine what steps the INS can take to eliminate

or dramatically reduce these incidents." A 1992 communiqué from the Commissioner's Director of Congressional & Public Affairs strikes a more defensive tone: "The Border Patrol is comprised of decent and caring persons...Those who allege these agents are wild and reckless are badly mistaken."

#### THE CURRENT INS INTERNAL COMPLAINT PROCESS IS INEFFECTUAL

Three years ago, a Chula Vista police officer told a newspaper reporter, just days after his department investigated the shooting of two undocumented immigrants by a Border Patrol agent:

"He's in uniform, he's performing his job...and he got into a situation where he thought it was necessary to fire his gun. I don't see any criminal complaint; there may be some procedural problems."

"Procedural problems" is an understated description of what's wrong with the process used to investigate allegations of misconduct by agents of the United States Border Patrol or other officers of the INS. According to the AFSC, 116 administrative complaints of misconduct were lodged with the INS or other divisions of the Department of Justice in 1989 and 1990. During the same period, 20 reports were made to Congress and 27 lawsuits were filed in federal court. The allegations ranged from a beating in Florida to a shooting in Arizona to a hit-and-run in California. The complaints included seven deaths. There were also charges of sexual abuse, illegal searches and seizures, and verbal and psychological abuse. For each incident, AFSC reports "no action taken" or, for a very small number, "action unknown."

A decade has passed since the U.S. Commission on Civil Rights



identified serious problems in the INS complaint review procedures in a report to the President and Congress.

Currently, complaints of misconduct against INS and Border Patrol agents are handled by the Justice Department's Offices of Professional Responsibility (OPR) and Inspector General (IG), with monitoring, as of 1993, by the Office of Internal Audit (OIA). There are problems of overlapping jurisdiction and ambiguous authority. Even the investigators themselves seem to be uncertain about which offices have which duties and responsibilities. Equally important, the processes are, in the words of Americas Watch, "undermined by near total secrecy." According to AFSC, the current system is also "underfunded and understaffed."

Regardless of which body eventually investigates the complaint, the process has serious inadequacies. There is no requirement that complainants be notified of the receipt of their complaint nor are copies made readily available. Complainants are not apprised of the investigation's status, the ultimate disposition, or of available appellate channels. Furthermore, although the INS Handbook requires an interview with the complainant, the OPR does not necessarily conduct one. As a result of these system failings and inadequacies, the credibility of the complaint process is undermined.

The current system also lacks outreach and publicity about the complaint process. This is not a complete surprise given the interest of an internal review board in keeping outreach to a minimum. A New York Police Department survey of such review boards

noted a few years ago that "[p]ublicity is problematic" for such boards "since a successful publicity campaign will invariably increase the number of civilian complaints filed." Furthermore, there is not an adequate number of investigators and no time limit on investigation duration. In addition, at the conclusion of an investigation's conclusion, agencies are unable to actually enforce recommended discipline of the officers.

Two recent settlements in civil suits brought by CRLA have given plaintiffs' counsel a closer look at the internal complaint review process for the Livermore Border Patrol Sector and the San Francisco INS District in California. The settlements are limited in time, geographic scope and type of misconduct (joint INS-local law enforcement operations).

*Velasquez v. Ackerman*, C 84-20723 (N.Dist., Cal.), requires that specific allegations of misconduct be submitted by plaintiffs' attorneys directly to the Office of Internal Audit. The OIA Director -- whose post was created at about the time of settlement -- is to acknowledge receipt of the allegation by sending a letter to the plaintiffs' counsel, and must refer all allegations of civil rights violations to the OPR or IG.

If the OIA Director does not investigate, plaintiffs are to be informed in a letter of the reasons why and they may submit written reasons why an investigation should take place. If an investigation is undertaken, it is to be completed within a fixed time period and the OIA Director is to inform the plaintiffs of the general findings and conclusions. Plaintiffs may then submit a

letter to the OIA recommending disciplinary or corrective action and the INS is to advise plaintiffs of its final determination regarding the action.

The *Pearl Meadows Mushroom Farms v. Nelson*, C 82-1896, (N.Dist., Cal.), settlement is substantially like *Velasquez* in terms of notification of the action and opportunities for plaintiffs to respond, geographic area and time limitations, but involves only misconduct related to INS workplace "surveys."

While there may not be enough data to make final conclusions about efficacy of this process, it is clear that the threshold requirements for investigation are high indeed. These settlements have shown that even with a window on the heretofore closed-door review process, and added inputs in recommending investigation and discipline, complainants are severely restrained.

While these settlement arrangements are a step in the right direction, their limitations and the hesitancy of the INS to take them seriously have shown that a more expansive, nation-wide adjustment of the complaint process is needed. The INS published proposed rules for notice and comment in October 1992, 57 Fed.Reg. 47,011. The proposed rules would require that the OIA coordinate the reporting and disposition of allegations referred to the commissioner. The most specific the proposed rules get about the pace of the expedited process is to require "prompt" referral and reporting of complaints. Despite recommendations for change, the most the Service has done is to clarify its guidelines on use of firearms and to expedite the internal complaint process. Even this

modest measure came about only because of Congress' explicit mandate. The rule falls short of the needed overhaul as it simply summarizes what is publicly known about current Department of Justice policy and procedures for investigating complaints of misconduct.

#### THE PUBLIC MUST KNOW OF ITS RIGHT TO COMPLAIN

It is conventional wisdom among activists that people will not file complaints where there is no publicity about the procedure. Establishment of a community outreach office, as provided in §5(b) OF h.r. 2119, is an important first step in assuring effective outreach.

The publicity campaign associated with the legalization programs of the Immigration Reform & Control Act of 1986 (IRCA) -- with improvements -- could serve as a model for effective outreach by a civilian review body. Under IRCA, the Attorney General was obliged to "broadly disseminate information" about the benefits of legalization or "amnesty" and details of the application process. He was also required to designate voluntary organizations known as "qualified designated entities" ("QDEs") to assist in the legalization process.

One study by the RAND Corporation and Urban Institute reported that the IRCA publicity budget was small and not always channeled to the appropriate media. Public Media called the government's publicity campaign "unresponsive, dull and uninformative" and charged the INS with failing "to create awareness and a climate of information" about the program or to address the "powerful mistrust



and skepticism" of the immigrant applicants. A sequel to the RAND-Urban Institute study noted the agency's difficulties in getting outreach funds at the district level, recruiting and training case-handling staff and working with local advocates.

More generally, the INS has been criticized for neglecting its "service" orientation in favor of its enforcement mentality. Prospective complainants will be unwilling to approach INS offices if they think it may result in their being deported.

Human rights organizations could play a role in an enforcement commission outreach campaign by being charged with educating the public about the complaint process as well as receiving complaints. Without doubt, the border monitoring projects of the American Friends Service Committee have de facto served in this role for a number of years, in addition to the Committee's work in promoting civilian review. More recently, groups like the Urgent Response Network in Oakland, California have adopted the techniques made successful by Amnesty International by activating a grassroots mailgram campaign following incidents of alleged abuse.

Under IRCA, Congress had concluded that the use of voluntary agencies would encourage immigrants who were fearful and distrustful of authority to come forward to apply for amnesty. The QDEs' "very function was to provide a buffer -- a confidential intermediary -- between the INS and the alien...."

We applaud the provisions in H.R. 2119 for a 24-hour, toll-free, multilingual complaint hotline, allowing complaints to be filed in any form, and making complaint forms available -- in

languages reflecting the immigrant populations --at all service facilities and upon request from the commission.

#### CONFIDENTIALITY IS CRUCIAL FOR COMPLAINANTS

Considering the intimidation many immigrants experience when dealing with the INS, the commission should also provide for distribution of forms to community-based organizations. For example, the Albuquerque Border City Project was created to provide complaint intake services in a less threatening atmosphere.

Given the interest of the INS in discovering employees who violate standards of enforcement, and of the public in protecting itself from such violations, some provisions need to be made to protect the confidentiality of complainants and witnesses, and to protect them from retaliation. There is precedent for this in the 1986 immigration reform act, IRCA, which prohibited INS officials from releasing information furnished as part of the legalization application. Congress recognized that the legalization program could succeed only if "the fear of prosecution or deportation [that] would cause many undocumented aliens to be reluctant to come forward and disclose their illegal status..." could be overcome. The confidentiality was "meant to assure applicants that the legalization process is serious, and not a ruse to invite undocumented aliens to come forward only to be snared by the INS."

Under IRCA, the cloak of confidentiality was to cover even the files and records kept by the designated organizations and that the applicants consent to the forwarding of their applications to INS for processing.

The provision in §6(b)(1) for third party complaints is important. The concept is not unprecedented. Canada accommodated immigrants afraid to come forward to seek that country's amnesty several years ago, by allowing applicants to appoint a third party to initiate their application. The concept of broad and liberal standing is consistent with both state law -- such as California's consumer protection statutes for injunctive relief on behalf of the general public -- and in international forums like the individual petition procedures of the Inter-American Commission on Human Rights. Complaints made anonymously or by public officials or other third parties are also permitted under the Royal Canadian Mounted Police Act. A public commission has been in operation for a number of years investigating complaints made against the Canadian national police force.

Since many of the complainants and witnesses before the proposed review commission may be undocumented or persons in immigration proceedings, information gathered in the process of investigation should not be used against the complainant or witnesses in deportation or exclusion proceedings. By contrast, under the present scheme for filing an administrative complaint with INS, deportation may indeed follow. The only exception is where the immigrant requests, and is granted, a stay of deportation. H.R. 2119 does provide (§8) that testimony and information gathered as part of a complaint, investigation, or hearing may not be used in any proceeding under the Immigration and Nationality Act.

The bill also prohibits retaliation (§7), which is defined as any action or threat of action against a person, including an immigration agent, because such person filed a complaint, testified, assisted, or participated in any manner in an investigation or hearing.

#### LOCAL COMMUNITY RELATIONS COUNCILS PLAY A LIMITED ROLE

City councils in some border cities have attempted to set up municipal advisory commissions to improve relations between the Border Patrol and local communities. In Albuquerque, an INS Community Relations Board was established in 1991. Although the board members meet regularly with the local Border Patrol chief, its role is limited to asking questions and even then they must be of a general nature. An El Paso Local Accountability Commission created last year by the City Council is authorized to conduct hearings and investigations, but lacks subpoena powers. Its mandate is to examine the Patrol and the El Paso community's "common regard for human dignity and conduct toward one another." But, the local chief there has refused to recognize the body, claiming his federal agency has no reason to follow the advice of a local entity.

The same chief who would not recognize the independent review commission created an El Paso Sector "Border Patrol Community Relations Board" in February of this year. The board, composed of ten civilian members, serves mainly as a "liaison and avenue of communications between the U.S. Border Patrol and the general public." The board has virtually no authority to take action on



complaints, enforce recommendations, or influence policy. It does have the capacity to "route inquiries and other information through proper channels."

The El Paso-style board is useful in terms of improving community relations and the Border Patrol's image, as the Acting Commissioner noted in her testimony. But, it does not improve the complaint process itself. This is not to say there is no place for improved community-officer relations or that all efforts to deter misconduct will be found exclusively in the external oversight process. These local efforts should be continued, but their function is distinct from that of a national review commission.

#### **THE PARTIES MUST BE KEPT INFORMED OF THE PROCESS**

The process must also for the accused -- and the accuser -- to know the outcome of the hearing and the reason for the result. For the exonerated officer, disclosure will restore public confidence in the process and in the individual. For the guilty agent, disclosure should deter the misconduct and inform fellow officers that such conduct will not be tolerated.

Current INS and Inspector General policy does not even assure acknowledgment of the existence of an investigation nor does it allow for the complainant to be informed of the disposition of the complaint. H.R. 2119 does not explicitly provide for notifying complainants that a complaint has been received, informing them of the investigative process, or advising them of the disposition of the complaint. In order for complainants to have faith that justice has been done, there must be communication throughout the

complaint process.

The current internal investigations often take many months. The timelines set out in H.R. 2119, §6(e), are needed for prompt investigation of complaints in order for the review system to retain credibility with the public. An investigation and written report must be completed within 60 days of assignment, unless the commission board authorizes an extension. Once an investigation is completed, a three-member panel of board members will review the report, and hold a hearing if the alleged abuse is serious or if a majority of the panel votes for a hearing. Hearings and transcripts will be open to the public, unless there is good cause for keeping them closed.

#### **DISCIPLINE SHOULD BE RECOMMENDED FOR SUBSTANTIATED COMPLAINTS**

The disciplinary recommendation portion of H.R. 2119 provides that when a finding may constitute a criminal offense, the commission board must notify federal or state authorities. In all substantiated complaints, the board will recommend disciplinary action based on a schedule of sanctions determined by the commission. If the Service does not adopt the board's recommendations, it must submit a written explanation within 30 days. The recommendation and Service refusals will be made public.

The bill does not make the disciplinary recommendations binding, and does not contemplate a meeting or re-assessment by the board after the Service has issued its refusal to comply with the suggested discipline. In the experience of police review commissions, the more authority a board holds, the more resistance

it meets from the police departments and officers. However, over time, even authoritative boards become accepted as part of the system. Initial restraint may be advisable in the creation of the review commission, and further powers, such as binding recommendations, could be granted as the board becomes established.

#### **TRACKING COMPLAINTS PROVIDE AN 'EARLY WARNING'**

Currently, the offices which investigate complaints do not have accessible statistical information. The *Los Angeles Times* reported earlier this year that, "immigration officials said they do not keep track of abuse complaints and have no comprehensive data on internal discipline of agents." Under H.R. 2119, §6(j), the review commission would be required to compile and publish, at least annually, a statistical summary of all complaints received and the dispositions of such complaints. Most police review boards publish both monthly and annually. To be effective, the INS review commission should be required to publish monthly, and the results should be made public.

In the same vein, keeping track of complaints against an employee, even if unsubstantiated, can help an agency to pinpoint potential problems with agents. When an agent accumulates repeated allegations of misconduct in his or her file, a manager should consider further training or counseling.

Several police departments monitor repeat complaints and some rely on such "recidivist lists" for progressive discipline. For example, the Seattle and San Jose police departments monitor and the Boston department maintains a progressive discipline file. The

Gainesville, Florida department tracks any encounter where the officer reports resisted arrest or battery of the officer. In New York, commanding officers are sent a copy of each complaint against one of their subordinates because the former are held accountable for the conduct of members of their command and are expected to discipline or refer for counseling as is appropriate.

H.R. 2119's version of a recidivist list is the "Early Warning Program" (§6(i)). Under this program, the commission would conduct a periodic review of all complaints in order to determine whether particular Service employees have been the subject of repeated complaints or have otherwise demonstrated they may be having difficulty dealing appropriately with members of the public. The results of the review would be presented to the appropriate authorities and the commission would make recommendations to the Service regarding training or counseling.

#### **COOPERATION IS NEEDED FROM IMMIGRATION OFFICIALS AND RANK-AND-FILE**

Many communities have implemented police review commissions with varied functions and authority. Common commission functions include overseeing police activities, providing an accessible forum for complaints, undertaking investigations, acting as liaisons between police forces and their communities, and making policy recommendations. The commissions initially met with resistance by police forces, but after a time have been accepted as a necessary part of the system.

It should come as no surprise, therefore, that the Service and its employees may resist outside review in what might be termed a



"green wall" of reluctance. The resistance may be polite at the top echelons. Acting Commissioner Chris Sale told this committee that "it is neither necessary nor desirable to create a new bureaucracy of this size....Given this proposal and the existing review system...enactment of this legislation is not necessary at this time." Or, the resistance may be angry and cynical from the rank-and-file.

Some of the resistance to civilian review is generic to law enforcement. The commission may not actually be denounced by INS agents as what the National Fraternal Order of Police once called "a page right out of the Communist handbook...to weaken [police] work, to incapacitate them or make them a subject of ridicule." A 1983 study of the use of deadly force by police by two former Justice Department researchers captures the same sentiment, in less strident terms: "Any effort to disarm (or even control) an armed police force violates the public (and police) conception of the essence of policing -- even though this conception may have little foundation in reality."

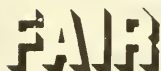
Internal resistance, however, should not lead to an abandonment of external oversight. To this end, experts counsel that there be fairness, access and openness. In particular, investigators must be "hardnosed" and experienced and the hearing officers should be fair and qualified, which may not translate as "representative."

#### **H.R. 2119 WILL COMPLEMENT OTHER REMEDIAL CHANNELS**

In the end, Congress will have to wrestle with the threshold

question of civilian oversight. If the review commission envisioned in H.R. 2119 is to truly spotlight abuses, punish unacceptable behavior and encourage an acceptable code of conduct, Members of Congress -- and INS administrators -- should consider some of the elements discussed above. Nonetheless, a review board alone cannot deter the misconduct. Lawyers must persevere with civil suits for damages, criminal prosecutions, and petitions in international forums. And, if we are to put an end to abusive conduct, non-governmental human rights organizations must continue, in the words of Professor Emeritus Frank Newman, to "mobilize shame" against the offending authorities.

APPENDIX 12.—OPEN LETTER, WITH ENCLOSURES, DATED OCTOBER 15, 1993, FROM DAN STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM



Federation for  
American  
Immigration Reform

Suite 400  
1666 Connecticut Avenue, N.W.  
Washington, D.C. 20009  
(202) 328-7004  
FAX (202) 387-3447  
Daniel A. Stein, *Executive Director*

**Board of Directors**  
Sharon Barnes, *Chairman*  
John Tanton, M.D., *Founder*  
*Chairman, 1979-1987*

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Garrett Hardin, Ph.D.  
Janet Harte  
Richard C. Lamm  
Stephan B. Swensrud  
Sidney Swensrud  
*Chairman, Reserve and*  
*Endowment Fund*

**National Board of Advisors**  
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*Governor, State of Colorado,*  
*1975-1987, Chairman*

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Gerda Bikales  
Dorothy R. Blair  
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Frances Burke, Ph.D.  
General Daniel S. Campbell  
Bruce Morgan Casner  
Cleveland Chandler, Ph.D.  
William Chip  
Donald A. Collins  
The Hon. Shelby Cullom Davis  
Anne H. Ehrlich  
Paul R. Ehrlich, Ph.D.  
James R. Epstein  
Helen Graham  
Amb. Marshall Green  
Lawrence E. Harrison  
Steven Hart  
Bonnie Hawley  
Walter E. Hoadley  
The Hon. Walter D. Huddleston  
Jacquelyne J. Jackson, Ph.D.  
Mrs. T. N. Jordan  
Judith Kurefsky, Ph.D.  
Edward Levy, Ed.D.  
The Hon. John V. Lindsay  
Henry Luca, III  
Donald Mann  
Henry Mayer, M.D.  
K. C. McAlpin  
The Hon. Eugene McCarthy  
Helen Millikan  
Alan C. Nelson  
Peter Nunez  
Roger Tony Paterson  
Frad Pinkham, Ed.D.  
Sidney B. Rawitz  
Ward L. Smith  
The Hon. Elvis J. Stahr  
Monica Bell Steensma  
Alan N. Wasdan  
Peter M. Waga

*FAIR is a (501)(c)(3) public interest  
organization working to end illegal  
immigration and reduce levels of  
legal immigration. Contributions  
are tax-deductible.*

October 15, 1993

An Open Letter

To whom this may concern:

I'd like to underscore a number of points from our conversation this week concerning FAIR.

For years FAIR's educational efforts have been instrumental in helping public officials and other interested parties understand the critical need for comprehensive reform of our nation's immigration laws. Because of FAIR's effectiveness and visibility in the national press, open-border lobbying groups, including the National Council of La Raza and the National Immigration Forum, have routinely resorted to attacking FAIR in desperate attempts to preempt any rational debate. Lacking any reasonable argument they have repeatedly raised the charge of racism. The latest attack is fronted by a group called Fairness and Accuracy in Reporting. This little-known group has launched an unfair and inaccurate smear campaign suggesting FAIR is racist and contending, "FAIR has received too much unchallenged coverage of late." (National Journal, 7/31/93).

Let me set the record straight.

FAIR's policies and practices are non-discriminatory. Founded in 1979, it has been a founding principle of FAIR "that immigration policy should not discriminate for or against persons on the basis of race, religion, national origin or political or social group membership." FAIR's extensive public positions, public testimony, publications, and well-known public record over a decade and a half have demonstrated our commitment to these principles. Numerous public officials and organizational leaders have commended FAIR's work. (See attached.)

The policies of FAIR are established by FAIR's Board of Directors. FAIR does not take contributions for projects that are tied to specific policies, nor does it accept contributions for projects or policies that are at variance with our organizational mission and guiding principles.

FAIR's record speaks for itself, and we are proud of that record. We are also proud of the breadth of our public support, and work hard to

handle this difficult issue with the care and thoughtfulness it deserves. We are a tough, hard-hitting, fact-based organization dedicated to public education. We don't get bogged down in ideological battles, we just provide solid information. In this fact alone resides the reason we are a prominent force in the public debate today.

FAIR receives funding from nearly 40 foundations. They are mainstream and well-regarded foundations. We also receive considerable financial support from our membership. This highly diversified portfolio includes no corporate or union funding.

Fairness and Accuracy, which ironically purports to advocate media fairness, has alleged that the Pioneer Fund, one of the many foundations that contribute to FAIR, is racist. These allegations are absurd and untrue.

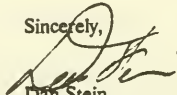
Although open border advocates claim that the Pioneer Fund is a key source of FAIR's funds, its support constitutes only approximately 4.4 percent of our income. FAIR's total income since 1988 has been approximately \$14 million, of which Pioneer has contributed \$600,000. This funding has been used in support of our general educational programs.

The Pioneer Fund is recognized as a charitable foundation by the U.S. Government. The Pioneer Fund contributes to many educational and research universities conducting work in areas such as heredity, health, genetics, population growth, and immigration. The Pioneer Fund states it is firmly guided by the principle that all people should be given an equal opportunity in life and should not be the target of discrimination based on race, religion or ethnic origin.

FAIR is only one of many prominent and well-respected organizations that receive grants from the Pioneer Fund. Other grantees include, for example: the University of Minnesota, the University of London, the University of Delaware, Johns Hopkins University, Smith College, Tel Aviv University, Cornell University, and the National Hemophilia Foundation.

Please feel free to call me if you or your Congressman have any other questions regarding this matter. After closely examining the facts, I'm sure you'll agree these kinds of baseless attacks are mean-spirited, divisive and unproductive of responsible public debate.

Sincerely,



Dan Stein  
Executive Director





The Federation for American Immigration Reform

## FOR YOUR INFORMATION

1666 Connecticut Ave., NW • Suite 400 • Washington, DC 20009  
Tel. (202) 328-7004 • Fax (202) 387-3447

### FAIR STANDS BY THESE PRINCIPLES

THAT U.S. immigration policy should not discriminate for or against persons of a particular race, religion, culture or national origin;

THAT every immigrant to the United States should be a legal immigrant;

THAT illegal immigration can and should be reduced by humane measures consistent with our democratic ideals;

THAT U.S. immigration policy should not undermine opportunities for America's poor and disadvantaged who seek to improve their working conditions and wages;

THAT there should be a comprehensive ceiling on immigration to be fixed in accordance with the demographic, natural resource, and economic goals of the United States;

THAT the U.S. should encourage family planning and economic development worldwide, to improve the quality of life and reduce migration pressures; and

THAT assimilation is a positive American value. We oppose laws, programs or policies that may impede this process, which has historically benefitted both immigrants and the nation as a whole.

# FAIR

The Federation for American Immigration Reform

## FOR YOUR INFORMATION

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### QUOTES

"The research FAIR has conducted into possible legislative reforms has been very valuable to Congress in developing proposals to strengthen our immigration laws."

*The late Althea Simmons, former Director  
Washington Bureau of the NAACP*

"With facts in hand, FAIR has worked in a reasonable and responsible manner to mobilize concerned citizens and present its case to the public and press, to the Executive and to members of Congress."

*Former Congressman, Tony Coelho*

"For those of us on the front lines, trying to hold back the surge of illegal entries without adequate resources and without official support for immigration law enforcement, FAIR has been a real morale booster."

*Richard Bevans, past-president  
National Border Patrol Council  
(AFL-CIO)*

"FAIR has played a constructive and important role by bringing balanced and thoughtful research to the debate on this highly sensitive issue, and at the same moment, advancing the case for stronger immigration policies."

*Senator Alan K. Simpson*

"Right now, FAIR is engaged in a national effort to alert the American public to the dangers of our present immigration policies."

*Jacob Sheinkman  
Textile Workers Union, AFL-CIO*

"Of particular help to me has been the Federation for American Immigration Reform...I truly appreciate their able assistance."

*Senator Charles Grassley*

"The research FAIR has conducted into possible legislative reforms has been very valuable to Congress in developing proposals to strengthen our immigration laws."

*Governor Lawton Chiles*

"FAIR is a remarkable citizens' group...that has remained unfailingly rational, polite and just in the struggle to clarify, normalize and institutionalize our borders."

*Georgie Anne Geyer  
Syndicated Columnist*

"I believe the American people owe your organization a large debt of gratitude. Without question FAIR is the most effective organization in the United States working to change our chaotic immigration policies."

*Walter D. Huddleston  
Former Senator*

"Our economy simply cannot afford today's run-away immigration. FAIR's program of reform is essential for a sound business climate in America's future."

*Robert F. Schubert  
Former Vice-Chairman  
Bethlehem Steel Corp.*

"FAIR is a "respectable group," not among the "crazy-eyed" reactionary groups."

*Pedro Castillo, Vice President  
League of United Latin American Citizens*

"I want to commend you and your organization on the work you have done over the years to have a rational debate on immigration policy... The Federation for American Immigration Reform always sticks to the intellectual, rational issues of public policy and not the emotional pros and cons that a lot of groups get into."

*Steve Horn  
U.S. Representative*



The Federation for American Immigration Reform

# FOR YOUR INFORMATION

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Tel. (202) 328-7004 • Fax (202) 387-3447

## BOARD OF DIRECTORS

**Sharon Barnes**, Chairman of FAIR's Board is a former director of Population Information and Education at Planned Parenthood, and vice president of Zero Population Growth.

**Sarah G. Epstein** is on the board of the Pathfinder Fund, the Experiment in International Living, Planned Parenthood of Metropolitan Washington and Center for the Development of Population Activities, and serves on the Public Policy Advisory Committee of the Population Institute.

**John Tanton M.D.** is the former chairman of the Sierra Club National Population Committee from 1971-1975. He was the 1990 recipient of the Chevron Conservation Award.

**Otis Graham** is a professor of History and Director of the Graduate Program in Public Historical Studies at the University of California.

**Janet Harte** has long been active in volunteer work, serving on the boards of the League of Women Voters, Planned Parenthood, and the Corpus Christi Human Relations Committee.

**Stephen Swensrud** has been active for many years with various educational and medical institutions in the Boston area and is presently involved with the Dana Farber Cancer Institute.

**Richard Lamm** served as Governor of Colorado from 1975 through 1987, and presently serves as director of the Center for Public Policy at the University of Denver.

**Garrett Hardin, Ph.D.** is a Professor Emeritus for Human Ecology, University of California, Santa Barbara, and a lecturer and writer of numerous books and articles.

**Henry Buhl III** is president of the Buhl Family Foundation and founder of the SoHo Partnership, a not-for-profit organization providing vocational training and employment to homeless persons.

**Nancy S. Anthony** has been active in several Boston area medical, social service, and educational institutions and in local, state, and national politics.



# FAIR

The Federation for American Immigration Reform

## FOR YOUR INFORMATION

1666 Connecticut Ave., NW • Suite 400 • Washington, DC 20009  
Tel. (202) 328-7004 • Fax (202) 387-3447

### WHY THE PRESS, CONGRESS AND PUBLIC LOOK TO FAIR FOR ANSWERS

The Federation for American Immigration Reform (FAIR) is the nation's leading organization working on immigration limits. Led by a Board of Directors composed of some of America's most prominent experts on U.S. population and environmental policy, and anchored by some 50,000 members nationwide, FAIR is the mostly widely-cited private source on immigration policy in America today. This non-profit, non-partisan group has, among other notables, former Colorado Governor Dick Lamm, Senator Eugene McCarthy, and Professor Garrett Hardin among its advisors and directors.

**FAIR's Policies and Practices are Non-Discriminatory** - Founded in 1979, it has been a founding principle of FAIR "that immigration policy should not discriminate for or against persons on the basis of race, religion, national origin or political or social group membership." FAIR's extensive public positions, public testimony, publications, and well-known public record over a decade and a half have demonstrated its commitment to these principles. Numerous public officials and organizational leaders have commended FAIR's work. (See attached)

**National Media Recognize FAIR's Credibility** - FAIR is sought after for radio and national television on a regular basis, with substantive appearances in just the last twelve months on *MacNeil-Lehrer Report*, *Today Show*, *Crossfire*, *CBS News*, *NBC News*, *ABC News*, *Sonya Live*, *Donahue*, *60 Minutes*, *This Week with David Brinkley*, etc. Journalists across the nation turn to FAIR executive director and attorney Dan Stein for centrist commentary and factual background on immigration policy. National polls show that FAIR's positions on virtually all major immigration issues are widely supported by the overwhelming majority of the American people -- including African-Americans, Hispanics, and Asian-Americans (e.g., Gallup 1993, Roper 1992, Newsweek 1993, Field 1993, Latino Public Opinion Survey, UT Austin, 1992).

**Congress Has Depended On FAIR For Over A Decade** - FAIR has been asked to testify before Congress on more immigration-related issues in the past ten years than any other organization in America, more than 50 times in the past decade.

APPENDIX 13.—LETTER DATED OCTOBER 3, 1993, FROM ROBERT M. TOBIAS, NATIONAL PRESIDENT, THE NATIONAL TREASURY EMPLOYEES UNION



RECEIVED

OCT 8 1993

IMMIGRATION

October 3, 1993

The Honorable Romano L. Mazzoli  
Chairman  
Committee on the Judiciary  
Subcommittee on International Law,  
Immigration, and Refugees  
2138 Rayburn House Office Building  
Washington, DC 20515-6216

Dear Mr. Chairman:

Thank you for the opportunity to appear before your Subcommittee on H.R. 2119, a bill to establish an Immigration Enforcement Review Commission. I would like to provide additional information for the record.

1. Congressman Becerra asked where the legislation provided that a Service employee did not have the right to a hearing if a complaint had been filed against him/her. I responded that it was NTEU's understanding that only in certain circumstances, under the proposed legislation, would a service employee be entitled to a hearing. H.R. 2119, Section 6 (f)(2)(3) and (4) provide:

The panel shall conduct hearings on the complaint if--  
(A) the alleged abuse is of a serious nature, as defined by the regulations prescribed under authority of this Act; (B) the Panel, by majority vote, decides to hold a hearing. (3) The Panel shall issue a written finding on the complaint based on the report alone or on the report alone and on a report and hearing, if one is held...  
(4)(A) If no hearing was held, request that the Panel conduct a hearing. A hearing shall be held if one member of the Panel votes to hold a hearing.

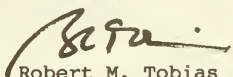
The legislative language is clear, there is no guarantee for a hearing. If the complaint is not "serious" as defined by the regulations or if none of the Panel members find it necessary to hold a hearing - there will not be a hearing for the accused service employee. Employees have no fundamental due process rights in this legislation if they do not have a guaranteed right to a hearing.

NTEU was also asked what would happen if an anonymous call was made and the caller said she had been raped by a Customs Inspector.

Inspector. Would the Customs Service conduct an investigation? Complaints of such a serious nature would be turned over to the Office of Internal Affairs. That Office would turn it over to the local authorities. Currently, whether or not an anonymous complaint is investigated depends on the gravity of the complaint. The example of a rape is obviously so extreme as to warrant an investigation. However, Customs does not investigate all anonymous complaints. This practice is different from the proposal in H.R. 2119 which would require an investigation of all anonymous complaints regardless of the seriousness of the allegations and would allow findings based on anonymous complaints without a hearing.

Thank you for the opportunity to submit this additional information.

Sincerely,



Robert M. Tobias  
National President

cc: Congressman Becerra

APPENDIX 14.—STATEMENT OF SAMUEL WALKER, PROFESSOR OF  
CRIMINAL JUSTICE, DEPARTMENT OF CRIMINAL JUSTICE, UNIVER-  
SITY OF NEBRASKA AT OMAHA

Statement On H.R. 2119  
To Establish an Immigration Enforcement Review Commission

by

Samuel Walker  
Professor of Criminal Justice  
University of Nebraska at Omaha

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Mr. Chairman, I would like to thank the sub-committee for this opportunity to present my views on H.R. 2119.

I am Kiewit Professor of Criminal Justice at the University of Nebraska at Omaha. I have written and taught about policing and police-community relations for nineteen years. Two of the eight books I have published are directly relevant to this topic: The Police In America: An Introduction (2nd ed, 1992)<sup>1</sup> and Taming the System: The Control of Discretion in Criminal Justice, 1950-1990 (1993).<sup>2</sup>

My current research interests include the subject of the civilian review of the police. My publications include a report on Civilian Review of the Police: A National Survey of the 50 Largest Cities, 1991<sup>3</sup> and, most recently, an article, "The Effectiveness of Civilian Review: Observations on Recent Trends and New Issues Regarding the Civilian Review of the Police."<sup>4</sup> I am including copies of both with my testimony.

Over the years I have served as a consultant to law enforcement agencies. In May, 1993 I was invited to speak at the annual meeting of the Police Executive Research Forum (PERF) on the subject of the employment of racial minorities in policing.

I am a member of the Board of Directors of the American Civil Liberties Union (ACLU), a member of its police misconduct task

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<sup>1</sup> (New York: McGraw-Hill, 1992).

<sup>2</sup> (New York: Oxford University Press, 1993).

<sup>3</sup> Samuel Walker and Vic W. Bumphus, Civilian Review of the Police: A National Survey of the 50 Largest Cities (Omaha, NE: University of Nebraska at Omaha, 1991).

<sup>4</sup> Samuel Walker and Vic W. Bumphus, "The Effectiveness of Civilian Review: Observations on Recent Trends and New Issues Regarding the Civilian Review of the Police," American Journal of Police, XI (No. 4, 1992): 1-26.



force, and the principal author of the ACLU handbook, Fighting Police Abuse: A Community Action Manual.<sup>5</sup>

In addition to my expertise on civilian review, my position reflects my knowledge of the history of American law enforcement, the problem of police and racial minority group relations, and the problem of police misconduct.

I would like to address three specific issues: (1) civilian review as an established feature of contemporary law enforcement (2) the effectiveness of civilian review; (3) the special case of immigration law enforcement.

#### Civilian Review as an Established Feature of Law Enforcement

In the last decade, civilian review has emerged as a popular mechanism for reducing police misconduct. Civilian review is defined as a procedure for reviewing complaints about police misconduct by persons who are not sworn officers employed by the agency in question. It represents an "independent" review in the sense that the persons investigating complaints are not employed by the same agency as the person who is the subject of the complaint.<sup>6</sup>

Civilian review has rapidly become the norm in big city policing in the United States. My 1991 survey found that 60 percent of the police departments in the fifty largest cities had some form of civilian review. This includes cities in every region of the country; for example: New York City, Chicago, Miami, San Francisco, and Dallas. Since then, five additional cities have also adopted some form of civilian review,<sup>7</sup> while others have revised and strengthened their existing procedures.<sup>8</sup> Also during the last two and a half years, civilian review has become far more prevalent among medium-sized and small cities.<sup>9</sup>

In light of these trends, we can safely say that civilian review is not a radical and untested procedure. It has become

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<sup>5</sup> (New York, 1992).

<sup>6</sup> For a discussion of the different types of civilian review and the relative degree of "independent" review each one affords, see Walker and Bumphus, Civilian Review of the Police.

<sup>7</sup> Seattle, Denver, San Jose, Boston, Philadelphia.

<sup>8</sup> New York City, Omaha.

<sup>9</sup> See the Compendium published periodically by the International Association for Civilian Oversight of Law Enforcement (IACOLE).

standard practice in American law enforcement. Several police departments have been operating with it for almost twenty years.

The fact that civilian review officials now have their own professional association (the International Association for Civilian Oversight of Law Enforcement [IACOLE]) which holds an annual meeting and publishes a regular newsletter is further evidence of the fact that civilian review is now an established part of American law enforcement.<sup>10</sup>

With only one or two exceptions,<sup>11</sup> all of the existing civilian review procedures were adopted by ordinance. Thus, in each city the adoption of civilian review represents a democratically arrived at decision by the duly elected representatives of that city. The existing procedures have not been imposed on an unwilling city government by external authority.

The decision to adopt civilian review a legislative finding (1) that police misconduct is a serious problem; (2) that internal review procedures have failed to adequately address the problem; and (3) that civilian review is a promising remedy.

Even police unions, long the leading opponents of civilian review, are becoming increasingly supportive of the concept or at least neutral. In Omaha, Nebraska police union officials participated in the drafting of an executive order that revised the existing review procedure.<sup>12</sup> In both Denver, Colorado, and Seattle, Washington, local police union officials said that civilian review was something they "could live with."<sup>13</sup>

I would also point out that the growth of civilian review is an international movement. The United Kingdom enacted a law in 1985 creating a national civilian review procedure. Civilian review exists in several provinces of Canada. Canada enacted a law creating a civilian review procedure for the Royal Canadian Mounted Police (RCMP) in 1988, Civilian review also exists in several

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<sup>10</sup> International Association For Civilian Oversight of Law Enforcement (IACOLE), 1204 Wesley Avenue, Evanston, IL 60202.

<sup>11</sup> Omaha, Boston.

<sup>12</sup> "Avoiding Political Squabbling," Law Enforcement News (July/August 1993).

<sup>13</sup> "Denver Presses Ahead," Law Enforcement News (September 30, 1992). "Auditor Proposed," Seattle Post-Intelligencer, November 13, 1991.

provinces of Australia.<sup>14</sup>

Civilian review is an idea whose time has come. It is an established procedure in most American big cities, is spreading rapidly among smaller cities, and is also an established procedure around the world.

### The Effectiveness of Civilian Review

The effectiveness of civilian review is an extremely complex and controversial subject. Unfortunately, to date there have been no rigorous, independent evaluations any civilian review procedures.

Opponents of civilian review often claim that it "doesn't work." There is no factual basis for that statement. The necessary studies have not been conducted.<sup>15</sup>

Measuring the effectiveness of any police complaint procedure is extremely difficult. The official figures on complaints filed and complaints sustained that are routinely available are highly ambiguous and capable of being interpreted in different ways.<sup>16</sup>

Let me cite one example. The fact that a particular law enforcement agency has a low rate of complaints could mean either (1) that their officers are in fact working in a very professional manner, or (2) that the agency is actively discouraging the filing of complaints.

There is some evidence that in fact civilian review does work. In several cities, the number of complaints filed rose after a civilian review procedure was established. A high rate of complaints may mean that more citizens are confident that their complaint will receive a fair hearing. A few examples help to illustrate this phenomenon.

In the wake of the original Rodney King incident in Los Angeles in 1991, it was noted that the San Francisco police department had six times as many complaints per officer as did the Los Angeles police department. Some observers, myself included, argued that San Francisco had more complaints filed because it had

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<sup>14</sup> Andrew J. Goldsmith, ed., Complaints Against the Police: The Trend to External Review (Oxford: Clarendon Press, 1991). IACOLE, Compendium.

<sup>15</sup> Walker and Bumphus, "The Effectiveness of Civilian Review."

<sup>16</sup> Walker and Bumphus, "The Effectiveness of Civilian Review."

a relatively independent civilian review procedure.<sup>17</sup> Subsequent investigations of the Los Angeles police department found that, in fact, it was actively discouraging complaints.<sup>18</sup>

In New York City, meanwhile, the number of complaints filed increased ten-fold between the mid-1960s and mid-1970s.<sup>19</sup> No one seriously suggests that the performance deteriorated by a factor of ten. In fact, there is reason to believe that improvements in recruitment standards, training, and supervision improved their performance. The dramatic rise in the number of complaints was probably due to improvements in the complaint procedure, making it more visible and accessible. Thus, far more citizens who felt they had a grievance believed they would receive a fair hearing.

These data are directly relevant to the goals of civilian review: establishing and maintaining public confidence in law enforcement. The available data, while not dispositive of the subject, suggest that it advances this goal.

One study which attempted to evaluate the effectiveness of different kinds of complaint procedures found that citizens who filed complaints were more satisfied with the process in departments with civilian review than in departments which handled complaints through the traditional internal review process.<sup>20</sup>

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<sup>17</sup> "Police Attacks," The New York Times, March 24, 1991. The LAPD had 6.5 complaints per 100 officers, compared with a rate of 65 per 100 officers in San Francisco. Data compiled from Police Foundation, The Big Six (Washington, DC: The Police Foundation, 1991), p. 144 and NYCLU, Civilian Review of Policing: A Case Study Report (New York, 1993), pp. 135-136.

<sup>18</sup> [Christopher Commission], Report of the Independent Commission on the Los Angeles Police Department, Chapter 9. (Los Angeles, July 1991). ACLU of Southern California, The Call For Change Goes Unanswered (Los Angeles, March 1992), pp. 20-26.

<sup>19</sup> Ronald Kahn, "Urban Reform and Police Accountability in New York City: 1950-1974," in Robert L. Lineberry and Louis H. Masotti, eds., Urban Problems and Public Policy (Lexington, MA: Lexington Books, 1975).

<sup>20</sup> Douglas Perez, "Police Accountability: A Question of Balance," Unpublished Ph.D. dissertation, University of California at Berkeley, 1978. Some of the data is reported in Wayne Kerstetter, "Who Disciplines the Police? Who Should?" in William Geller, ed., Police Leadership in America (New York: Praeger, 1965), pp. 149-182. Due to the small number of subjects in the Perez study, I regard the findings with some skepticism --even though I would like to celebrate those findings.



### The Special Case of the Immigration Enforcement

H.R. 2119 would establish an Immigration Enforcement Review Commission to handle complaints regarding the conduct of officials employed by the Immigration and Naturalization Service (INS) and the Customs Service.

Other testimony submitted to this subcommittee documents the pattern of misconduct by immigration enforcement officers. I will not reintroduce that evidence here.

One aspect of that evidence, about which I have special expertise, does deserve comment. My research and writing covers the history of American policing. It is an established fact that throughout that history, police misconduct has been directed primarily at the most vulnerable members of society. They include the poor, the politically powerless, and racial minorities. Research on the police in the 1960s, for example, found that officers singled out people in these categories precisely because they knew that such people would be unable or unlikely to protest their mistreatment.<sup>21</sup>

The victims of misconduct by immigration enforcement agents represent a particularly vulnerable group of persons. Many are in fact undocumented persons and face possible deportation should they come forward with their complaints. Enforcement agents are well aware of this vulnerability and apparently use it as license for misconduct.

The INS cites the low number of complaints per arrest filed against its officers, claiming this as evidence that it does not have a problem with misconduct.<sup>22</sup> In fact, these figures could mean just the opposite. As I mentioned earlier, prior to the Rodney King beating in 1991 the Los Angeles police department had a low number of formal complaints filed. Subsequent investigations found that the LAPD actively discouraged complaints, and in some cases even harassed or arrested persons attempting to file them. Thus, the low rate of formal complaints may itself be evidence of a serious

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<sup>21</sup> Albert Reiss, The Police and the Public (New Haven: Yale University Press, 1971). This study was sponsored by the President's Commission on Law Enforcement and Administration of Justice (1965-1967). The Commission's final report is The Challenge of Crime in a Free Society (1967).

<sup>22</sup> See America's Watch, Frontier Injustice (New York: Human Rights Watch, 1993), p. 31, n. 102.

problem of misconduct.<sup>23</sup>

This perceived immunity from discipline on the part of enforcement agents is a compelling reason for enacting H. R. 2119 and creating the Immigration Enforcement Review Commission. Given the vulnerability of so many of the victims of misconduct, extra measures are required

#### The Requirements of Effective Independent Review

The effective review of complaints about police misconduct requires several basic elements.

First, responsibility for the review of complaints should be lodged with an independent agency. This approach signals to both law enforcement agents and the public that complaints about misconduct will be taken very seriously.

Second, the persons who investigate individual complaints and conduct the initial fact-finding should not be colleagues of the officers who are the subject the complaints.

Third, the complaint review agency must have sufficient powers and resources to conduct a thorough investigation of the facts. This includes access to the relevant information and documents and the power to issue subpoenas.

Fourth, the complaint review agency must be required to complete individual investigations in a timely fashion.

Fifth, the complaint review agency should adopt an "early warning program" to identify law enforcement officers who are the subject of an unusually high rate of complaints. The complaint review agency can then notify the appropriate supervisors about the possible need for special training or counselling for officers with a high rate of complaints.

Sixth, the complaint review agency should compile and publish on a regular basis data on the number and pattern of complaints and the disposition of complaints.

Seventh, the complaint review agency should establish appropriate public outreach procedures designed to inform members of the public about their right to file complaints and the procedure for filing such complaints. Wherever a law enforcement agency regularly deals with persons whose primary language is not English, all procedures should be in the languages of those

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<sup>23</sup> The problems with interpreting official data on complaints filed are discussed in Walker and Bumphus, "Evaluating the Effectiveness of Civilian Review."

persons. An effective outreach program should also include a 24-hour toll-free hotline to receive complaints. The Los Angeles police department (LAPD), for example, has established such a hotline.

In conclusion, I would like to say that H.R. 2119 meets the requirements I have specified above. I urge you to vote for H.R. 2119.

# Criminal Justice Policy



Criminal Justice Policy Research Group  
Department of Criminal Justice

Number 91-3

## Civilian Review of the Police: A National Survey Of The 50 Largest Cities, 1991

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Department of Criminal Justice  
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### Civilian Review: The New National Consensus

Procedures for civilian review of citizen complaints about police misconduct exist in 60 percent of the big cities in the United States. A national survey found civilian review procedures in 30 of the 50 largest cities.

Civilian review procedures have spread rapidly in recent years. Ten have been established since 1983. Fifteen, or half of the current total, have been established since 1986. Three new procedures began operations in 1991 (Long Beach, Toledo, Minneapolis).

The spread of civilian review represents a new national consensus on civilian review as an appropriate method of handling citizen complaints about police misconduct. This consensus reflects the judgment of elected officials—mayors and city council members—in over half of the big cities.

### Classification of Civilian Review Procedures

Civilian review is defined as a procedure in which complaints about police misconduct are reviewed at some point by persons who are not sworn police officers.<sup>1</sup>

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Existing civilian review procedures vary greatly. No two systems are exactly alike. The national survey classifies procedures according to:

- (1) who does the initial investigation of a citizen complaint; and,
- (2) who reviews the investigative report and makes a recommendation for action.

The three types of civilian review agencies are:<sup>2</sup>

**Class I.** (a) Initial investigation and fact-finding by non-sworn personnel; (b) Review of investigative report and recommendation for action by nonsworn person or board consisting of a majority of nonsworn persons.

**Class II.** (a) Initial investigation and fact-finding by sworn police officers; (b) Review of investigative report and recommendation for action by a nonsworn person or board which consists of a majority of nonsworn persons.

**Class III.** (a) Initial investigation and fact-finding by sworn officers; (b) review of investigative report and recommendation for action by sworn officers; (c) opportunity for the citizen who is dissatisfied with the final disposition of the complaint to appeal to a board which includes nonsworn persons.

**Comment.** The survey rejects the commonly used distinction between "internal" and "external" review procedures. Some of the existing procedures (i.e., Chicago, Detroit) are "internal" in the sense that the staff are employees of the police department or police commission. Because the staff members are not sworn officers,



however, these procedures provide an independent review of complaints. By contrast, the Kansas City Office of Civilian Complaints is "external" to the police department, with a civilian director, but complaints are investigated by sworn officers. Although nominally "external," it does not have involvement of nonsworn personnel at the critical fact-finding stage.

### Distribution of Existing Civilian Review Procedures

Twelve of the 30 civilian review procedures, or 40 percent, are Class I systems. Fourteen, or 46.7 percent, are Class II systems. Four, or 13.3 percent, are Class III systems.

There is no pattern to the geographic distribution of civilian review procedures. There is no pattern to the distribution of civilian review procedures based on the racial composition of the city. Procedures exist in cities with a high percentage of racial minorities (Detroit; Atlanta; Washington, DC) and in cities with relatively small racial minority populations (Indianapolis, Minneapolis).

### Enabling Authority

Most (23 out of 30) of the existing civilian review procedures have been established by local ordinance. Three were created by state statute and four by executive order.

Creation of civilian review procedure by ordinance represents a significant change from the 1960s when the two most important civilian review procedures were established by executive order. In both New York City and Philadelphia liberal mayors created civilian review procedures when their respective city councils refused to act. The civilian-dominated Civilian Complaint Review Board in New York City was abolished by referendum in 1966. The Philadelphia Police Advisory Board was abolished by executive order in 1967.

Creation of a civilian review procedure by ordinance represents a judgment about the need for civilian review by a majority of the elected representatives in a particular city.

### Power

\* None of the existing civilian review procedures have any power to impose discipline. All have only the power to make recommendations for disciplinary action to the police chief or police commission.

### The Survey

The survey represents the first national survey of civilian review procedures in the United States. Researchers at the Criminal Justice Department at the University of Nebraska at Omaha conducted a telephone and mail survey of the fifty largest cities (based on the 1990 Census). Police departments were contacted by telephone and department spokespersons were interviewed concerning procedures for handling citizen complaints. Where a civilian review procedure existed,

documents regarding the structure and process of the procedure were requested. These documents were used to verify the information obtained in the telephone interviews.

### The Question of Effectiveness

The survey did not address the question of effectiveness. To date, there have been no independent evaluations of the effectiveness of civilian review procedures in the United States.

The number of complaints filed in a particular city, and the rate per population, do not permit meaningful comparisons of different cities. A low rate of complaints may only reflect a lack of public confidence in the complaint process; a high rate of complaints may reflect public confidence in the process.

Many police departments and civilian review agencies publish summary statistics on the percentage of complaints sustained or not sustained. It is impossible to evaluate those figures without independently investigating the original complaint, how the complaint was handled, and whether the decision was appropriate given the facts of the case.

### Other Civilian Review Agencies

The survey studied civilian review procedures only in the 50 largest cities in the United States. Additional civilian review procedures exist in Rochester, NY; Hartford, CT; Berkeley, CA; Flint, MI; San Diego County, CA; Dade County, FL. At least six civilian review procedures exist in Canada (Toronto, Montreal, British Columbia, Manitoba, Quebec, the Royal Canadian Mounted Police), four in Australia, and one covering the police in England.<sup>3</sup>

### Unanswered Questions: The Need for Further Research

Civilian review is an extremely complex and controversial subject. Many questions about the structure, process, and effectiveness of them remain unanswered. The most important questions include:

(1) **The Effectiveness of Civilian Review.** No independent evaluations of the effectiveness of civilian review have been conducted. Meaningful evaluation could be done through: (a) public opinion surveys to determine whether the existence of a civilian review procedure is associated with more positive evaluations of police performance and/or greater confidence in the complaint process; (b) comparative audits of complaint processes to determine whether civilian involvement is associated with more thorough investigations and/or more recommendations for disciplinary action where complaints have been sustained.

(2) **The Administration of Civilian Review Procedures.** Existing civilian review procedures vary considerably in terms of their procedures and authority. Some have sub-

poena power, while others do not. Some conduct public hearings, while others do not. Some have the power to make recommendations about general police policies, while most do not. There are differences in how complaints are accepted for review (at police stations only vs. other locations; in-person vs. in-writing vs. telephone).

Comparative case studies of several local civilian review procedures would begin to serve to identify the conditions of an effective and efficiently-run civilian review procedure.

(3) **The Politics of Civilian Review.** Civil rights activists have been calling for civilian review of the police for over thirty years. Until recently they have been largely unsuccessful. The recent growth of civilian review procedures suggests a significant change in the political context. What factors are associated with the creation of a local

civilian review procedure? Changing city demographics? A new majority on city council? Mayoral leadership? A decline in the effectiveness in opposition from the police department?

### Endnote

1. A nonsystematic collection of material on civilian review boards is found in International Association of Civilian Oversight of Law Enforcement (IACOLE), *Compendium of International Civilian Oversight Agencies* (Evanston, IL: IACOLE, 1989).
2. A similar classification, using different terminology, was created by Wayne Kerstetter, "Who Disciplines the Police? Who should?," in William A. Geller, ed., *Police Leadership in America: Crisis and Opportunity* (New York: Praeger, 1985), pp. 149-182. Kerstetter's "Civilian Review" is the same as Class I in this report; his "Civilian Input" similar to Class II here; "Civilian Monitor," similar to Class III here.
3. IACOLE, *Compendium of International Civilian Oversight Agencies* (1989).

Table 1 - Civilian Review Agencies in the 50 Largest U.S. Cities

City	Name of Organization	Date Est.	Enabling Authority	Class	Number of Members	Method of Appointment Board/Director	Responsibilities	Other Characteristics
New York, NY	Civilian Complaint Review Board	1987	Ordinance	II	12	6 by mayor 6 by council	Reviews all citizen complaints—makes recommendations	Also makes training and policy recommendations to police agency
Los Angeles, CA	Internal			None				
Chicago, IL	Police Board (Office of Professional Standards)	1974	Ordinance	I	20	By mayor (approved by council)	Receives and investigates all complaints—makes recommendations	The Office of Professional Standards operates under the authority of the police board, separate from the police department
Houston, TX	Civilian Review Committee	1990	Ordinance	II	21	By mayor	Reviews complaints of excessive force, serious bodily injury, or death	The Review Committee has 21 members divided into 3 separate panels
Philadelphia, PA	Internal			None				
San Diego, CA	Citizen Review Board	1983	Ordinance	II	20	By city manager	Reviews all citizen complaints—makes recommendations	
Detroit, MI	Board of Commissioners (Office of Chief Investigator)	1974	Ordinance	I	5	By mayor (approved by council)	Receives and investigates all complaints—makes recommendations	The Office of the Chief Investigator handles all investigations and is staffed by civilian investigators
Dallas, TX	Citizen's Police Review Board	1988	Ordinance	II	13	By city council	Reviews shooting and other complaints—makes recommendations	
Phoenix, AZ	Disciplinary Review Board	1986	Administrative Order	III	5		Reviews disciplinary decisions—makes further recommendations	The Disciplinary Review Board consists of four sworn officers and one citizen
San Antonio, TX	Internal			None				
San Jose, CA	Internal			None				
Indianapolis, IN	Citizen's Police Complaint Office	1989	Ordinance	II	9	3 by mayor 3 by council 3 by police (sworn)	Reviews complaints of excessive use of force, abuse of authority, and discourtesy—makes recommendations	Citizen's Police Complaint Office is an investigative office headed by a director appointed by the Public Safety Director
Baltimore, MD	Complaint Evaluation Board	1977	State Statute	II	7	The board consists of 7 state agency heads or their delegates	Reviews complaints of discourtesy and excessive use of force—makes recommendations	

Table 1 (continued) - Civilian Review Agencies in the 50 Largest U.S. Cities

City	Name of Organization	Date Est.	Enabling Authority	Class	Number of Members	Method of Appointment Board/Director	Responsibilities	Other Characteristics
San Francisco, CA	Office of Citizens' Complaints	1983	Ordinance	I	1	Director appointed by Police Commission	Receives and investigates all complaints—makes recommendations	The Office of Citizens' Complaints is headed by one director who conducts investigations and recommends
Jacksonville, FL	Internal			None				
Columbus, OH	Internal			None				
Milwaukee, WI	Fire and Police Commission	1977	State Statute	I	5	By Governor	Receives and investigates complaints of excessive force and abusive language—makes recommendations	Investigates and reviews allegations of misconduct against all public employees
Memphis, TN	Internal			None				
Washington, DC	Civilian Complaint Review Board	1980	Ordinance	I	7	By mayor (approved by council)	Receives and investigates all citizen complaints—makes recommendations	
Boston, MA	Internal			None				
Seattle, WA	Internal			None				
El Paso, TX	Internal			None				
Nashville, TN	Internal			None				
Cleveland, OH	Police Review Board/Office of Professional Standards	1988	Ordinance	I	5	By mayor (approved by council)	Reviews citizen complaints—makes recommendations	The Office of Professional Standards is composed of both civilians and sworn staff and investigates all complaints of police misconduct
New Orleans, LA	Office of Municipal Investigation	1983	Ordinance	I	1	Director appointed by mayor	Investigates and reviews all complaints of police misconduct—makes recommendations	The Office of Municipal Investigation conducts investigation and review of misconduct involving all public employees in the city
Denver, CO	Internal			None				
Austin, TX	Internal			None				
Fort Worth, TX	Internal			None				
Oklahoma City, OK	Internal			None				
Portland, OR	Police Internal Investigations Auditing Committee	1982	Ordinance	II	14	Committee consists of 3 councilmembers (elected)—plus 11 citizens	Reviews cases designated as serious ones—makes recommendations	
Kansas City, MO	Office of Citizen Complaints	1983	Executive Order	II	1	Director appointed by mayor	Reviews all complaints of police misconduct—makes recommendations	The Office of Citizen Complaints has a 5 member staff headed by a director who reviews cases and makes recommendations
Long Beach, CA	Citizen Police Complaint Commission	1991	Ordinance	I	11	By mayor (approved by council)	Investigates and reviews complaints of police misconduct, excessive force, false arrest, and racial or sexual overtones—makes recommendations	The Commission has an independent investigator not associated with the police department who conducts all investigations
Tucson, AZ	Citizens' Police Advisory Committee	1982	Ordinance	III	13	By city council—the Police Chief and City Manager are members also	Serves as appellate review in cases alleging inadequate policies and procedures or violation of existing procedures	The Committee is comprised of both sworn and nonsworn personnel

Table 1 (continued) - Civilian Review Agencies in the 50 Largest U.S. Cities

City	Name of Organization	Date Est.	Enabling Authority	Class	Number of Members	Method of Appointment Board/Director	Responsibilities	Other Characteristics
St. Louis, MO	Board of Commissioners	1989	State Statute	III	4	By Governor (approved by Senate)	Serves as appellate review in cases alleging police misconduct	
Charlotte, NC	Internal			None				
Atlanta, GA	Civilian Review Board	1984	Administrative Order (mayor)	II	22	By mayor (approved by council)	Reviews complaints of excessive force, serious bodily injury, or death—makes recommendations	The Review Board consists of 22 members divided between 4 panels—board also reviews complaints against the Department of Corrections
Virginia Beach, VA	Internal			None				
Albuquerque, NM	Independent Counsel	1987	Ordinance	II	1	By city council	Reviews complaints and findings of internal affairs in allegations of police misconduct	The Independent Counsel is an attorney hired by the city council who reviews police internal investigations
Oakland, CA	Citizens' Complaint Board	1980	Ordinance	I	7	By mayor (approved by council)	Investigates and reviews complaints of excessive force; appellate review of case of nonforce—makes recommendations	The board has original jurisdiction over complaints of excessive force and appellate jurisdiction over nonforce complaints
Pittsburgh, PA	Office of Professional Responsibility	1986	Ordinance	II	1	Chief Investigator appointed by public safety director	Investigates and reviews complaints of misconduct—makes recommendations	Investigates and reviews all public safety employee complaints—office has 4 support staff members
Sacramento, CA	Internal			None				
Minneapolis, MN	Civilian Police Review Authority	1990	Ordinance	I	7	4 by council 3 by mayor (approved by council)	Investigates and reviews all complaints of police misconduct—makes recommendations	To begin operation April 1991
Tulsa, OK	Internal			None				
Honolulu, HI	Police Commission	1972	Ordinance	I	7	By Governor	Investigates and reviews complaints of misconduct on the part of police employees, including civilian personnel	The Commission utilizes 4 support staff who are full-time paid employees
Cincinnati, OH	Office of Municipal Investigation	1979	Ordinance	I	1	Chief Investigator appointed by mayor	Investigates and reviews all complaints of police misconduct—makes recommendations	Investigations and reviews complaints involving all city employees
Miami, FL	Office of Professional Compliance	1986	Ordinance	II	11	By city manager (approved by council)	Reviews complaints of police misconduct—makes recommendations	
Fresno, CA	Ombudsman's Office	1989	Ordinance	II	1	By mayor (hired)	Reviews all complaints involving shots fired, verbal intimidation—makes recommendations	
Omaha, NE	Public Safety Finding Review Board	1975	Executive Order	III	8	By mayor	Conducts appellate review of cases alleging police misconduct	The board consists of the Mayor, Chief of Police, Public Safety Director, Human Relations Director, City Attorney, one city councilmember, and two citizen volunteers
Toledo, OH	Civilian Review Board	1991	Ordinance	II	11	By mayor	Reviews complaints of police misconduct—makes recommendations	
Buffalo, NY	Internal			None				



Table 2 - Civilian Review Agencies, By Date of Creation\*

1991	Toledo Long Beach	1983	San Francisco New Orleans Kansas City
1990	Houston Minneapolis	1982	Portland Tucson
1989	Indianapolis St. Louis Fresno	1981	
1988	San Diego Dallas Cleveland	1980	District of Columbia Oakland
1987	New York City Albuquerque	1977	Cincinnati Milwaukee Baltimore
1986	Phoenix Miami Pittsburgh	1975	Omaha
1985		1974	Detroit Chicago
1984	Atlanta	1972	Honolulu

\*Dates indicate year authorized. Some agencies were authorized in one year but not operational until a year later. Dates also indicate the year the agency obtained authority over civilian complaints. Some agencies were established earlier but did not have responsibility over civilian complaints.

*Focus: Criminal Justice Policy* is published by the Center for Public Affairs Research, University of Nebraska at Omaha, Peter Kiewit Conference Center, 1313 Farnam-on-the-Mall, Omaha, Nebraska 68182. 402/595-2311. The University of Nebraska does not discriminate in its academic, admissions or employment programs and abides by all federal and state laws and regulations pertaining to same.

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**THE EFFECTIVENESS OF CIVILIAN REVIEW:  
OBSERVATIONS ON RECENT TRENDS  
AND NEW ISSUES REGARDING THE CIVILIAN  
REVIEW OF THE POLICE**

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Civilian review of the police has been a controversial issue in policing for nearly forty years (Terrill, 1991). The concept is defined as a procedure under which citizen complaints against police officers are reviewed at some point by persons who are not sworn officers. Virtually all proposals for civilian review were defeated in the 1960s, but in the last few years the concept has spread rapidly among big-city police departments. By 1992 over two-thirds (68%) of the police departments in the 50 largest cities had some form of civilian review (Walker & Bumphus, 1991; Walker, 1992). This paper reports the findings of a survey of the 50 largest cities and discusses the important new questions raised by this data.

The central issue regarding civilian review has traditionally been the question of whether it is appropriate for citizens to be involved in the complaint process. The police have opposed civilian review on the grounds that the concept intrudes on their professional autonomy, that persons who are not police officers are not competent to evaluate police actions, and out of fear of greater scrutiny of police behavior. The civilian review issue has also been a civil rights issue, pitting the African-American community against predominantly white police departments.

To a great extent, these traditional issues have been settled. The city councils in two-thirds of the largest cities have, in effect, made a legislative finding that some form of civilian review is an appropriate response to the problem of police misconduct. This development shifts the ground to a different set of questions. The central question concerns the effectiveness of civilian review. Does it work? Or, more precisely, is one form of complaint review more effective than others? This raises a host of subsidiary questions. How is effectiveness defined? What measures of effectiveness are appropriate? How useful is official data on citizen complaints and the disposition of complaints? This paper examines these and other new questions raised by the recent developments in the area of civilian review.

## THE 50-CITY SURVEY: FINDINGS

### *Methodology*

In the spring of 1991 a survey was conducted of citizen complaint procedures in the 50 largest cities in the United States (Walker & Bumphus, 1991). An initial telephone inquiry determined whether the police department had any form of citizen input in the complaint process. If the answer was yes, the respondent was asked to describe the process and also to forward official documents describing the complaint process. On the basis of the telephone interviews and the official documents, citizen complaint procedures were then analyzed and categorized according to a three-part classification system.<sup>1</sup>

### *Principal Findings*

The survey found some form of civilian review in 30 of the 50 police departments. Between April, 1991 and October, 1992, civilian review procedures were adopted in four additional cities, bringing the total to 34, or 68 percent of the total (Walker, 1992).<sup>2</sup> The survey also found an accelerating trend toward civilian review. Nineteen of the 34 (55.8%) have been established since 1986, with eight established between 1990 and 1992 alone. An earlier survey (West, 1988) identified a total of 15 civilian review, or external review procedures in the entire country by 1987.

There is some ambiguity regarding the exact date some civilian review procedures were created. In some instances, city councils passed an ordinance creating a new procedure in one year but did not actually begin its operation until the following year. In some cities (New York City [Kahn, 1975], Chicago, Milwaukee) preexisting units or agencies were revised several times over the years. The survey defined the effective creation date as the point when non-sworn persons gained some involvement in the complaint process.<sup>3</sup>

Civilian review appears to be a nationwide phenomenon, with no geographic region underrepresented. The demographic characteristics of cities also do not appear to be a factor. Civilian review procedures exist in cities with small African-American populations (Indianapolis, Minneapolis) as well as those with large minority populations (Detroit, Atlanta). The trend toward civilian review also appears to be an international phenomenon, at least in English-speaking countries, with the establishment of new procedures in England, Canada and Australia in the 1980s. The United Kingdom created a national system, the Police Complaints Authority (PCA) in 1985 (Goldsmith, 1991).

### *Types of Civilian Review Procedures*

The survey also found considerable variation among civilian review procedures in terms of the degree of civilian input and operating procedures. The degree of civilian input is the crucial factor in civilian review. "Degree" in this context refers to the exact point in the complaint process at which non-sworn persons participate. The three key points are: (1) the initial fact-finding investigation; (2) the review of investigative reports and the power to recommend action by the chief executive; (3) the review of decisions already taken by the chief executive. The survey developed a three-part classification system (Walker & Bumphus, 1991). This closely resembled classification systems developed by Kerstetter (1985) and Peterson (1991).<sup>4</sup>

Class I systems are those in which the initial fact-finding investigation is done by individuals who are not sworn police officers. Their reports go to a person (or persons) who is also not a sworn officer, and who makes a recommendation to the chief executive for action. Class II systems are those in which the fact-finding investigation is done by sworn officers, but the recommendation to the chief executive is made by a person (or persons) who is not a sworn officer. Class III systems



are those in which the initial fact-finding and recommendation are done by sworn officers; if the complaining party is unsatisfied with the disposition of the complaint, he or she may appeal that decision to a person who is not a sworn officer, or group of persons that includes at least some non-sworn persons.

Since the 1991 survey was conducted, two cities (Seattle and San Jose) have created "auditor" systems that do not fit neatly into any of the three classes. Under these systems, a non-sworn person has the authority to oversee the complaint process, and may make recommendations to police investigators, but has no power to make recommendations for discipline. The auditor approach fits the classification system created by Petterson (1991:276).

### *General Features*

Several features are common to all existing civilian review procedures. First, none have the power to impose discipline on a police officer and can only make recommendations to the police chief executive (Petterson, 1991).<sup>5</sup> Granting a civilian review agency the power to impose discipline would require a change in existing civil service laws, as well as collective bargaining contracts in most cities.

Second, 26 of the 30 procedures identified in 1991 were established by municipal ordinance or state statute. This represents a significant change from the pattern in the 1950s and 1960s in which the first two important procedures, in Philadelphia (Coxe, 1965; Hudson, 1972; Terrill, 1988; Walker, 1990) and New York City (Kahn, 1975), were created by executive order. Because they did not represent a decision by a majority of the elected representatives, they were politically and administratively vulnerable. The Philadelphia Police Advisory Board (PAB) was abolished by the executive order of a subsequent mayor. An expanded and more civilian version of the New York City CCRB was abolished by referendum. Thus, current civilian review procedures are on more solid legal footing and represent a broader community consensus than earlier procedures.

The extent of this community consensus is indicated by a 1992 public opinion poll that found broad public support for civilian review. The Louis Harris (1992) organization surveyed 1,248 adults and found that 80 percent favored review of citizen complaints by mixed teams of police and non-sworn investigators; 15 percent supported investigations

by non-sworn persons only, while only four percent supported the traditional approach of having citizen complaints reviewed entirely by police officers. Third, the survey revealed some of the problems involved in the commonly used terminology. The public and the media generally refer to these groups as "civilian review boards."

The national survey of civilian review procedures also found that the term civilian review *board* is a misnomer. Not all of the existing review procedures involve a multi-member board. Several are municipal agencies with a single director (Walker & Bumphus, 1991). The generic term "civilian review *procedure*" is a more accurate descriptor than civilian review board.

The term "independent" is also extremely ambiguous and the source of much misunderstanding. The Cincinnati Office of Municipal Investigations is independent in the sense that it is an agency separate from the police department. The Professional Standards Section of the Detroit Police Department, on the other hand, is under the jurisdiction of the Board of Police Commissioners and, thus, might be viewed by some observers as not independent (Littlejohn, 1981). However, the investigative fact-finding in Detroit is done by persons who are not sworn officers. Consequently, the 50-city survey deemed it independent. The Kansas City Office of Citizen Complaints (1983) is a separate municipal agency, with a director who is not a sworn officer and an office in a building separate from police headquarters. However, the fact-finding in Kansas City is done by sworn officers in the internal affairs unit. This makes the review of complaints in Kansas City much less independent of the police department than the procedure in Detroit.

## UNANSWERED QUESTIONS

### *Explaining the Patterns of Growth*

The recent growth of civilian review procedures has not received close attention by police scholars. With the exception of Terrill (1991) and West (1988), there is no general overview of this rapidly changing area of policing. There is a detailed analysis of the creation of only one of the current systems (Littlejohn, 1981). Occasional surveys of various agencies are conducted by private organizations (New York Civil Liberties Union, 1993) but the resulting reports often lack important data and do not reach a wide audience.

The agenda for future research on civilian review includes, at a minimum, explaining the recent growth of the phenomenon and developing more detailed comparative data.<sup>6</sup>

Some observations about the history of civilian review suggest the direction that research might take. In the 1960s, the two major civilian review procedures were abolished. Both had been created by liberal Republican mayors in response to the demands by civil rights forces and both were abolished primarily as a result of pressure from local police unions (Hudson, 1972; Terrill, 1988). In the case of New York City, a union-sponsored referendum abolished the civilian-dominated CCRB, leaving in place a board not dominated by civilians (Kahn, 1975). Because of the success of the police unions, many observers concluded that civilian review was essentially dead as a possible reform measure. A change evidently occurred in 1974, with the creation of two important review procedures (Detroit, Chicago). They were followed by twelve others over the next decade.<sup>7</sup> Since 1986, the spread of civilian review has been very rapid. The momentum of this trend appears to be accelerating, with the 1991 Rodney King beating and its aftermath providing an additional boost. No systematic data exists on cities smaller than the fifty largest. Impressionistic evidence suggests that there is increasing interest in civilian review in medium-sized cities.<sup>8</sup>

The trend of events suggests a significant change in the balance of power in the context of municipal politics. The most obvious possible explanation would be the growth of African-American political power, particularly in those cities where blacks constitute a majority of voters and where black mayors have been elected. Black political leadership was undoubtedly a factor in the creation of civilian review procedures in Detroit (Littlejohn, 1981) and Atlanta. Yet this cannot account for the creation of civilian review in cities with relatively small black communities (Indianapolis, Minneapolis, Seattle) and the absence of civilian review in some cities with relatively large black communities (Philadelphia). Nor is the election of a black mayor the critical variable, in and of itself. Philadelphia and Los Angeles have both elected black mayors but remain without civilian review procedures.

Many observers argue that the creation of a civilian review procedure requires a well-organized political effort by a coalition of community groups. This was the case in Indianapolis (Gradison, 1989) and Minneapolis, but it fails to account for the absence of civilian review in cities with similar community coalitions, such as Los Angeles

(Ripston, 1991) and Philadelphia (Coxe, 1988). A well-organized coalition has had great difficulty in strengthening the existing system in New York City (Siegel, 1991). In short, a well-organized demand for civilian review is probably a necessary condition, but not itself a sufficient one.

One major factor has been the apparent decline in the power of police unions, at least on this issue. Police unions were the principal force in defeating civilian review proposals in New York City (Kahn, 1975) and Philadelphia (Terrill, 1988) in the 1960s. Yet they have been increasingly unsuccessful in most cities. In fact, with the two most recently created review procedures, Seattle (Taylor, 1991) and Denver (Law Enforcement News, 1992), the police union either actively supported the proposal or chose not to oppose it. In both cases, the police union concluded that some form of civilian review would be adopted in any event and that it could live with the present proposal.

Generally speaking, police chiefs do not appear to be active opponents of civilian review. This represents a significant change from the 1960s when the International Association of Chiefs of Police adopted a official statement opposing civilian review (Police Chief, 1964). The attitude of the big-city chiefs is best indicated by the official position of the Police Executive Research Forum (1981), which has urged police departments to establish and maintain effective systems of discipline. Although it has not endorsed civilian review, PERF has not officially opposed the concept either.

A case-study approach could serve to illuminate the process by which civilian review procedures are established. In virtually every city, creation of a procedure is the result of some immediate controversy (usually a shooting or physical force incident). In each case, however, there had been a number of similar incidents in the past, each usually followed by a proposal for civilian review (Gradison, 1989; Taylor, 1991). The relevant question, then, becomes what changes led to the creation of a civilian review procedure? A case-study approach could identify whether the most important change or changes involved: (1) new mayoral leadership; (2) a new composition on city council; (3) a new police chief; (4) changes in the strategy and tactics of civilian review advocates; (5) some other relevant factor.



### *The Effectiveness of Civilian Review*

The most frequently asked question about civilian review is whether it works. At present, it is impossible to provide a definitive answer to that question. There are no thorough, independent evaluations of the effectiveness of any procedure, much less any comparative studies. Studies by Hudson (1972) and Perez (1978; 1992) are limited by serious conceptual and methodological problems. An evaluation of the New York City CCRB by the Vera Institute (1989a, 1989b, 1988) addressed a limited range of issues.

The question of effectiveness raises a number of problems. First, there is no single entity known as "civilian review." As the 50-city survey found, there are three general categories and a number of variations within each category (Walker & Bumphus, 1991). Any attempt to measure effectiveness needs to take into account the possibility that one form of civilian review may prove to be more effective than other forms. Common sense suggests that procedures with greater resources (e.g., number of staff) and powers (e.g., subpoena power) are more likely to be effective than other systems. By the same token, it would be dangerous to compare procedures solely on the basis of their formal structure and powers. One procedure that appears to be more "independent" on paper may be undermined through administrative resistance and thus be less effective than another system which is nominally less "independent."

Second, defining effectiveness is problematic. There are several possible measures of effectiveness that are related to the different objectives of the concept. Maguire (1991:186) identifies four distinct objectives of civilian review. They include: (1) maintaining effective discipline of the police; (2) providing satisfactory resolution of individual complaints; (3) maintaining public confidence in the police; and (4) influencing police management by providing "feedback from consumers." A comprehensive evaluation of effectiveness would take into account all four of these dimensions of civilian review.

In the minds of its advocates, the primary objective of civilian review is to provide a more independent review of citizen complaints (ACLU, 1966). The assumption has been that persons who are not sworn police officers are likely to conduct a more thorough investigation of a complaint than a fellow officer. The so-called "blue curtain" and the tendency of officers to cover up the misconduct of fellow officers has long been recognized as a phenomenon of the police officer

subculture (Westley, 1970; New York Civil Liberties Union, 1990) and a barrier to effective discipline. Advocates of civilian review have assumed that the review of complaints by non-sworn officers will result in more disciplinary actions and an improvement in on-the-street police behavior (ACLU, 1966).

### The Ambiguity of Official Data

One of the major problems confronting any attempt to evaluate the police complaint process (whether internal or external) is the ambiguous nature of official data on the number of complaints, the complaint rate (complaints per population or complaints per officer), the rate at which complaints are sustained, and the ultimate disciplinary actions taken, if any.

The number of complaints may reflect administrative procedures rather than police performance. In the wake of the Rodney King beating in March, 1991, some observers noted that San Francisco had more citizen complaints than did the much larger Los Angeles police department (New York Times, 1991). It is entirely possible that the existence of an strong civilian review procedure in San Francisco brings forth more citizen complaints. In fact, a study by the ACLU in Los Angeles in 1992 found that the police department was actively discouraging citizen complaints (ACLU-Southern California, 1992). In New York City, the number of complaints increased tenfold between the mid-1960s and the mid-1970s. This enormous increase appears to be associated with administrative changes that made the complaint process more open and more accessible to the public (Kahn, 1975).

Two comments on this phenomenon are in order. First, a higher rate of complaints could be viewed as an indicator of success: it reflects that fact that citizens are more confident that they will receive a fair hearing and therefore file their complaints (ACLU, 1992; Crew, 1991). The New York Civil Liberties Union (1990:29-33) attributed the 50 percent decline in the number of complaints filed with the CCRB between 1985 and 1989 to declining public confidence in the CCRB itself. Second, police departments face the unpleasant fact that the better they do the worse they will look. A more open and responsive complaint system will probably generate more complaints.

The impact of administrative changes on the number of complaints is extremely complex. In Detroit the creation of a more inde-

pendent review procedure produced an immediate increase in complaints, followed by a reduction (Littlejohn, 1981). A similar pattern was reported in Kansas City (Kansas City, Office of Citizen Complaints, 1983) and New York City (Kahn, 1975; New York Civil Liberties Union, 1990). The initial increase in complaints could be the result of greater public confidence in the complaint process. The subsequent decline could be the result of either citizen disillusionment with the process or a genuine improvement in police conduct, with the civilian review procedure functioning as a genuine deterrent to misconduct. The interplay of complaint procedures and the volume and rate of complaints is, in short, highly complex and complicates any attempt at evaluation.

The official data on the number and rate of complaints is problematic because we do not have any baseline data on the actual number of incidents of police misconduct. This issue is a highly political question, with some people arguing that misconduct is pervasive, while others argue that it is a relatively infrequent event. The available research on this question is suggestive at best. Albert Reiss (1968; 1971) found that police officers used "undue force" relatively rarely: in only 37 of 3,826 observed police encounters. This represented a rate of 5.9 for every 1,000 white citizens and 2.8 for every 1,000 black citizens. The New York City Civilian Complaint Review Board (1990:45-51) reported citizen complaints at rates ranging from a high of five per 10,000 to a low of one per 10,000 documented encounters between officers and citizens, depending on the neighborhood. These data suggest that excessive force is a statistically rare event. Reiss (1971:151), however, pointed out that instances of police abuse accumulate over time, creating the perception of police harassment. Official data on complaints has consistently indicated that racial minority males are disproportionately represented among complainants (New York City Civilian Complaint Review Board, 1990). Thus, the perception of a pattern of police harassment is a major factor in conflict between the police and racial minority communities.

The Police Services Study (PSS), which included a more representative sample of police agencies, used a victimization survey and found that 13.6 percent of all respondents felt that they had been the victim of police mistreatment in the previous year (Whitaker, 1982). In certain respects this might appear to reflect a very high rate of police misconduct. A study of 911 calls in Minneapolis, for example, found that only 40 percent of the addresses in the city had any contact with

the police (Sherman, 1987). Assuming for the moment that 13 percent of the population experienced some mistreatment, then a disturbingly high percentage of those with any contact at all would be the victim of misconduct. These observations are entirely speculative; it is dangerous to make estimates by combining the results of two unrelated surveys. Nonetheless, these observations are designed to highlight the absence of any systematic victimization data regarding police misconduct.

Only 30 percent of the PSS respondents who claimed to have been mistreated by the police filed a formal complaint about the incident (Whitaker, 1982). This figure bears a striking similarity to the 37 percent rate of reporting crimes to the police. Moreover, the reasons given for not filing complaints are very similar to the reasons for not reporting crimes (e.g., "wouldn't do any good," which was given by 43 percent of the respondents) (Whitaker, 1982; U.S. Department of Justice, 1991). Extrapolating these estimates to New York City (1990), one might estimate that even in the high complaint rate precincts there is some misconduct in 15 out of every 10,000 encounters. It is reasonable to conclude that official complaints received by police departments represent about one-third of all incidents of alleged police misconduct. An important research question involves whether the complaining/reporting rate is higher in some cities than others and whether the differences are associated with differences in the complaint process.

Even the raw number of citizen complaints is problematic. It is a truism that official police data on crime often reflect administrative practices rather than the actual behavior it purports to measure. An unknown number of crimes reported by citizens are unfounded by police. The recording of arrests also varies widely by department (Sherman & Glick, 1984). With respect to citizen complaints, a number of problems arise. First, there is evidence that some departments actively discourage the filing of complaints (ACLU-Southern California, 1992; Kahn, 1975). Second, commonly used terms are not standard across departments. The San Francisco Office of Citizen Complaints (1991) distinguishes between "complaints" and "allegations." One complaint may involve several different allegations against one or more officers. In 1990, the New York City Civilian Complaint Review Board (1990:9) received 3,377 complaints involving 5,554 separate allegations. Clearly, then, comparisons in the absence of standardized definitions are problematic. Imagine an event in which three officers verbally and physically abuse one citizen. One department might record



this as "one" incident or complaint, while another might record it as "six" complaints.

Police departments report very different rates at which citizen complaints are sustained. A citizen complaint may result in one of several outcomes. It is "substantiated" or "sustained" if the department agrees with all or some of the citizen's complaint. The officer is "exonerated" if the department agrees with the officer's version of the incident. The complaint is "not sustained" or "unfounded" if the investigation is unable to resolve the matter in the favor of either. Finally, many complaints are "dismissed" or "dropped," frequently because the complaining party fails to pursue the complaint or cooperate further with the investigation (New York, CCRB, 1990; San Diego, 1990).

The fact that a department sustains a relatively higher rate of complaints may be a result of the fact that it receives relatively few complaints. The smaller number of complaints would presumably include a relatively higher proportion of more serious instances of misconduct that are presumptively more likely to be sustained. By the same token, a relatively low rate of sustaining complaints in a department may be a product of receiving a high volume of complaints, which presumably includes a relatively lower percentage of more serious instances of misconduct.<sup>9</sup>

Any attempt to evaluate the effectiveness of a complaint review process needs to be incident-specific and seriousness-specific. Aggregate data on complaints and dispositions fail to take into account relevant distinctions between incidents. Common sense suggests that the unjustified use of physical force is far more serious than mere discourtesy. The use of racial or ethnic slurs is more serious than a neutral expression of discourtesy. A number of existing civilian review procedures, however, do divide complaints into two categories, according to seriousness (San Diego, 1990; Kansas City, 1983).

An important but hidden aspect of the complaint disposition process involves the lack of subsequent cooperation by the complaining party. In New York City, 35.4 percent of the complaints (1,197 out of 3,377) were dropped because the complaint was formally withdrawn or the complainant was unavailable or uncooperative (New York City, 1990:16). Critics of the CCRB characterized these data as "alarming" (New York Civil Liberties Union, 1990:28). The high rate of non-cooperation is not entirely surprising. Failure of the victim to cooperate is one of the major reasons why criminal cases are dismissed. With respect to complaints about the police, however, the reasons for with-

drawal or non-cooperation may reflect the behavior of the investigators. Complaint processing officials may discourage citizens through indifference, rudeness, or failure to act on complaints in a timely fashion. A telephone survey conducted by the Southern California ACLU (1992) found that Los Angeles Police Department officials actively subverted the complaint process, rarely providing the caller with the department's official toll-free telephone number for complaints. Even when cases are investigated, investigators from the police department's internal affairs unit or the civilian complaint agency make only a half-hearted attempt to locate the complaining party or potential witnesses.

In any event, an officially recorded disposition of "complainant unavailable" cannot be taken at face value. Advocates of civilian review argue that non-sworn investigators are likely to be more aggressive in following up on complaints and less hostile to complainants. While there are abundant *a priori* reasons for assuming this to be true (particularly the literature on the "blue curtain," [Westley, 1970]), there is at present no empirical evidence to support it.

This discussion highlights the point that the key element in the effectiveness of any complaint review system, whether internal or external, is the vigor of the investigative process. Presumably, this could be measured in terms of the number of witnesses contacted, the timeliness of the investigation, or other possible factors. At present, however, such data is not readily available. The formal administrative structure of any procedure (internal vs. external, independent vs. not independent, etc.) does not necessarily determine the vigor or the quality of investigations.

A study of the bias crimes unit of the New York City Police Department, however, does suggest that there is some relationship between the level of organizational commitment, the vigor of investigations, and case outcomes (Garofalo, 1991). The existence of a bias crimes unit reflected an organizational commitment to investigating hate-motivated crimes. Over 90 percent of the incidents investigated by the unit resulted in three or more follow-up investigative reports. Meanwhile, 76 percent of a comparable sample of non-bias crimes produced no investigative reports; only seven percent received three or more. The arrest rate for bias crimes was two and one-half to three times that of the non-bias crimes sample. In short, a greater formal organizational commitment produced more actual work that resulted in a measurable difference in outcomes.

## Public Opinion About the Police

Because one of the purposes of civilian review is to enhance public confidence in the police, surveys of public opinion offer a potential evaluation technique. The simplest approach would be to compare citizens' attitudes toward their local police department in cities with different complaint procedures (e.g., cities with civilian review vs. those without). Previous surveys of public opinion indicated some city-by-city variations in citizen evaluations of local police departments (U.S. Department of Justice, 1977). Significantly, white and black attitudes tend to move in the same direction, suggesting that persons of different races evaluate their local police department on the basis of roughly the same criteria. It would be possible to correlate such differences with complaint procedures. In some instances, it might be possible to identify changes in public opinion about a local police department that is associated with the creation of, or the revision of, a civilian review procedure.

Police complaint procedures could also be evaluated through surveys of public knowledge about the complaint process (e.g., the existence of a complaint procedure; where complaints could be filed). One could reasonably hypothesize that a relatively higher level of public awareness reflects a more effective job of facilitating complaints on the part of the police department. A low level of citizen knowledge about the complaint procedure might suggest that the police department is actively discouraging the filing of complaints.

Another possible measure of effectiveness would be the satisfaction of citizens who have filed complaints. Douglas Perez (1978; 1992) adopted this approach, surveying citizens who had filed formal complaints, comparing the responses in cities with civilian review and cities without it.<sup>10</sup> His data indicated a higher level of satisfaction in the complaint process in those cities with civilian input, including citizens whose complaints were not sustained. Unfortunately, the extremely small number of cases in his study raises serious questions about the reliability of his findings. He had only ten respondents in Berkeley, California, 19 in Kansas City, and 22 in San Jose (Kerstetter, 1985:168-169). The technique, however, appears to be a viable one.

The Vera Institute (1989b) surveyed a sample of 371 citizens who had filed complaints with the New York City CCRB. Significantly, it found a much lower rate of satisfaction among those whose complaints

were fully investigated (16%), compared with those who withdrew their complaints (62%), and those who accepted conciliation (59%). Vera concluded that "the investigative process itself has a significant negative influence" on citizen satisfaction. Dissatisfaction was associated with the length of time the complaint process took, the lack of contact with and information about the subject officer, and the final outcome. Not surprisingly, those whose complaints were substantiated were more satisfied than other complainants.

One of the important findings of the Vera study involved the conciliation option. Under the CCRB procedures, the complainant may be offered conciliation if the evidence is weak, the alleged misconduct not serious, and the subject officer does not have a long record of prior complaints (Vera, 1989b:3). Vera found that a minority of complainants (20%) desired severe punishment for the officer(s). Most (61%) had "moderate" objectives: an apology for themselves and/or a reprimand of the officer(s). The desire for a direct encounter with the subject officer(s) was "pervasive" and "significantly associated with complainant satisfaction" (Vera, 1989b:11).

The Vera study suggests a refinement of the objectives of civilian review. Many civilian review advocates conceptualize it in terms of a criminal trial, with a formal public hearing, presentation of evidence and cross-examination, and a formal adjudication. The Vera study suggests that evaluating the effectiveness of civilian review needs to be approached from the standpoint of a variety of possible procedures and outcomes, with each tailored to the seriousness of the alleged offense and the expressed desires of the complainant.

The literature on civilian review has to date neglected a large body of literature by social psychologists on the question of procedural justice. Lind and Tyler (1988) conclude that people who seek justice through some formal mechanism (e.g., the courts) are at least as concerned with the procedure itself as with the outcome. The result is not necessarily as important as the process of interaction—of getting a hearing and having a sense of being heard. This is consistent with the findings of the Vera (1989b) study of complainants in New York City. Future research on the effectiveness of civilian review needs to take into account the insights emerging from the work on procedural justice.



### Review Board Determinations vs. Police Determinations

Another potential measure of effectiveness would be the extent to which the determinations made by civilians in a complaint process differ from the determinations made by the police department. This approach would be particularly relevant in Class II systems (Walker & Bumphus, 1991) where a board or civilian agency director reviews investigative reports completed by the police internal affairs unit. Several of the current civilian review procedures publish data that provide some suggestive, although not definitive, leads on this matter. In 1990, the San Diego Citizens' Review Board disagreed with internal affairs findings in only seven of 297 Category I incidents (the most serious allegations of misconduct). This represented 2.3 percent of all Category I cases. The Review Board disagreed with internal affairs in only three of 138 Category II allegations (or 2.1% of all cases) (San Diego, 1990). In New York City, the pattern of disagreement was far more complex. The CCRB disagreed with 98 recommendations of its investigative staff (composed of both sworn officers and non-sworn investigators). This represented 8.4 percent of the 1,153 completed investigations in 1990. It disagreed with ten findings of "substantiated," reducing them to some lesser category for which no discipline would be recommended (New York CCRB, 1990:17). The ten originally substantiated cases were from a total of between 150 and 200 substantiated cases. The reporting of the data in the CCRB's *Annual Report* is not clear on this point. The CCRB also disagreed with 65 findings of "unsubstantiated," raising 28 (or 43%) to a finding of "substantiated." Only one other finding was raised to a finding of "substantiated." Thus, the CCRB raised the finding to a level at which formal discipline would occur in 29 of 98 disagreements (or 30%). In sum, the CCRB (which in 1990 did not include a majority of persons not employed by the police department) was more likely to recommend discipline than the investigative staff only rarely (slightly less than three percent of all completed investigations).

Several commentators have noted that civilian review procedures sustain citizen complaints at very low rates, rates that are not significantly higher than those reported by internal affairs units. The New York City CCRB substantiated only 3.8 percent of all complaints filed in 1988 and 2.8 percent in 1989. This appears to be an international phenomenon. Maguire (1991:187) found that the new Police Complaints Authority (PCA) substantiated only 8.2 percent of all fully in-

vestigated complaints, a rate that was "similar" to the previous and less independent procedure.

In some situations it may be possible to compare the record of the civilian complaint procedure with the police internal affairs unit. In some cities there is concurrent or overlapping jurisdiction over certain kinds of complaints. Hudson (1972) compared the activities of the Philadelphia Police Advisory Board (PAB) with the police internal affairs unit for several years in the 1960s. He found that the internal affairs unit was more likely to recommend discipline. Yet, this was a result of the fact that the two procedures were handling very different kinds of misconduct. Internal affairs generally handled corruption charges and violations of departmental policy. Such incidents are likely to involve less ambiguity about the facts of the case than are citizen complaints about excessive physical force or offensive language as to the facts—incidents that are often "swearing matches" that cannot be resolved through physical evidence or objective witnesses.

Several comments about these data are in order. First, they suggest that citizens do not substantially disagree with the judgment of police complaint investigators. This suggests that police officer fears that a civilian review process will be a "kangaroo court" are unfounded. At the same time it also suggests that civil rights leaders are likely to be disappointed that a civilian review procedure does not produce more findings of police misconduct. Second, the low rate of disagreement may be a result of the fact that the fact-finding is done by sworn officers. This would be a Class II system according to Walker and Bumplus (1991). The Citizens' Review Board has available to it only the information generated by the internal affairs investigation. The Review Board does have the power to request further investigation (San Diego, 1990), but the possibilities for covering up misconduct obviously remains.

Finally, it should not be forgotten that in all but a handful of cities, the ultimate disciplinary power remains with the police chief executive (Pettersen, 1991:287-289). Civilian review procedures have the power to recommend disciplinary action. The effectiveness of a civilian review procedure, therefore, depends upon the extent to which such recommendations are accepted and acted upon. The most "independent" review procedure imaginable would be rendered irrelevant if most recommendations were rejected. The data from the San Francisco Office

of Citizen Complaints (1991) is not encouraging on this point. According to the OCC's 1991 statistical report, the police chief did not impose any discipline in about one-third of the cases sustained by the OCC.

These data suggest a number of issues related to the effectiveness of civilian review. What is the rate at which recommendations are accepted by the chief executive? Assuming a relatively high rate of nonacceptance, what factors explain that pattern? Are their problems associated with the quality of the investigations and recommendations of the civilian review agency? Is there a highly antagonistic relationship between the civilian review agency and the chief executive? If so, is this antagonism the product of institutional conflict, particular personalities, or some other factors?

### Civilian Review as a Policy-Making Agency

Some advocates of civilian review argue that the procedure can serve as a monitor or maker of police department policy. Maguire (1991:186, 192-193) defines this as the "feedback" function of civilian review. Only a few of the existing civilian review procedures in the United States have this function as part of their official role. Most are limited to the review of individual citizen complaints on a case-by-case basis. The Philadelphia Police Advisory Board (PAB), however, had the authority to make recommendations about general police policy (Coxe, 1965). The current civilian review procedures in Tucson, Arizona and Berkeley, California have similar authority (Walker & Bumphus, 1991). Possibly even more important, the Tucson Citizens' Police Advisory Committee has the authority to undertake investigations on its own initiative, without having to wait for a citizen to file a complaint.

Advocates of this particular role argue that it can serve an effective preventive role, making corrections in general police operations in a way that might reduce the number of complaints in the future (ACLU, 1992). An evaluation of this dimension of effectiveness could identify specific policy recommendations, determine whether they were implemented, and whether there was any reduction in complaints that might be attributed to the change.

### Civilian Review as a Data Source

A recent manual on fighting police misconduct argues that a civilian review procedure could serve as an important source of data on police practices (ACLU, 1992). This addresses the traditional problem of the closed police bureaucracy and the difficulty in obtaining even the most rudimentary information about police practices, citizen complaints, and the disposition of complaints. Although researchers have had considerable success in recent years gaining access to police files on the use of deadly force (Fyfe, 1979; Geller & Karales, 1981), police departments have not been similarly forthcoming with respect to the use of physical force or other forms of misconduct. According to the proposed strategy (ACLU, 1992), the effectiveness of a civilian review procedure would be indirect. Instead of recommending discipline in particular cases, it would provide data that elected officials, community activists, and the news media could use to bring pressure on the police department to make needed changes. The strategy assumes that a civilian review agency would be less defensive about the implications of certain data and would be legally empowered to obtain and publish it.

Some already available data suggest how data generated by a civilian review agency could be used as a part of a strategy for improving police performance. One of the most important results of the Rodney King incident was a dramatic increase in public concern about police misconduct, as represented by official investigating commissions and investigative reporting by journalists.

Perhaps the single most important finding has been the fact that a small number of officers generate a disproportionate percentage of all complaints. This phenomenon had previously been documented by the U.S. Civil Rights Commission (1981). The Commission recommended that departments establish "early warning systems" to identify officers involved in an excessive number of citizen complaints and to take appropriate action to remedy the problem. The phenomenon of the "high complaint rate" officers (referred to colloquially as the "bad boys") has also been found in the Los Angeles police department (Independent Commission, 1991), the Los Angeles County Sheriff's Department (Kolts, 1992), Boston (1992), and Kansas City (New York Times, 1991).

A civilian review agency could generate such data on a routine basis, alerting both responsible police administrators and members of the



public to the existence of problem-prone officers. There are certain problems with such a strategy that would have to be overcome. Police unions would oppose the identification of "problem" officers by name. They would have a valid claim that using unsubstantiated complaints for such identification would represent a form of punishment without adequate due process. This problem might be overcome if officers were identified by a code number (e.g., Officer #1, etc.). This would protect the privacy and due process rights of the individual officer, while at the same time alerting responsible officials and the public to the existence of certain problem officers. It would be useful to know, for example, whether there were many such officers or only a handful; whether the number of problem officers had declined over previous years; whether the number of complaints involving the seemingly worst officers was declining over previous years.

Data published by existing civilian review agencies already provide valuable data on patterns of police misconduct. The New York City Civilian Complaint Review Board (1990) confirms the fact that racial minority citizens and low-income neighborhoods are disproportionately represented among citizen complaints. As expected, younger officers are involved in more complaints than senior officers. Younger officers are more often assigned to patrol duty in high-crime areas and on the evening shift, assignments that are presumptively more likely to generate conflict-filled encounters between the police and citizens (Fyfe, 1981).

With respect to officer race, however, the New York City data indicated that officers were represented as the subject of complaints at rates equal to their presence in the department. This is consistent with Reiss' (1968; 1971) earlier finding that excessive use of force did not follow a clear pattern of racial discrimination—although they may accumulate over time among low-income and racial minority males. The data also indicate that, with perhaps one exception, officers were no more likely to use force against citizens of one race compared with another. The exception was that Hispanic officers were involved in a higher rate of complaints from Hispanic citizens. Female officers, meanwhile, were the subject of complaints at only half the rate of their presence in the department. This finding is supported by the fact that in other departments female officers have not been identified as among those officers who are the subject of a high rate of complaints (Independent Commission). Subsequent research could be directed to

investigating whether the low rate of complaints against female officers reflects gender-related differences in on-the-street behavior or some other causal factor.

## CONCLUSIONS

For several decades, controversy over the concept of civilian review of the police has primarily involved the question of whether such a procedure should be established in a particular community. To a great extent, that question has been settled. Over two-thirds of the 50 largest cities in the United States have created some form of civilian review. These actions represent a legislative finding that the concept is an appropriate response to the problem of police misconduct.

The recent spread of civilian review introduces a new era in the history of this subject and raises a new set of questions. The important issues involve questions of effectiveness. What works? What kinds of systems are more effective than others? What kinds of procedures and resources are associated with success? How should success be measured? What kind of data is necessary for meaningful evaluations? This article has attempted to identify some of the problems facing any attempt to undertake a meaningful evaluation of the effectiveness of civilian review.

## NOTES

1. A valuable but non-systematic collection of information on civilian review procedures is found in International Association of Civilian Oversight of Law Enforcement (IACOLE), *Compendium of Civilian Oversight Agencies* (Evanston, IL, revised periodically). The Compendium is particularly valuable for information on civilian review procedures outside the United States. The data is summarized in Petterson (1991).
2. The four new cities are Virginia Beach, VA; Seattle, WA; Denver, CO, and San Jose, CA. In 1992 the mayor of Boston also created a limited civilian review procedure by executive order. Author's notes and conversations.
3. Because of the number of changes over the course of nearly 40 years (Kahn, 1975), the New York City CCRB presents an almost impossible

situation with respect to effective starting date. The authors of the survey determined that the changes made in 1987 constituted an important turning point in the history of the agency.

4. Kerstetter's categories are: civilian review, civilian input, and civilian monitor.
5. On this point, there is some ambiguity regarding the powers of the Milwaukee Police and Fire Commission, the Baltimore Complaint Evaluation Board and the Chicago Police Board.
6. There is considerable literature on the early history of civilian review in Philadelphia (Terrill, 1988) and New York City (Kahn, 1975).
7. These data are consistent with the findings of West's (1988) national survey conducted in 1987.
8. This evidence consists largely of the author's telephone conversations with journalists and community activists.
9. The assumption here is that more serious incidents, such as physical force, are more likely to be taken seriously by both complainant and investigators and more likely to involve physical evidence, such as injury requiring medical attention, that can help to verify the allegation. Less serious incidents, such as verbal abuse, are particularly difficult to verify.
10. The Perez data is more readily available in Kerstetter (1985:162-163, 168-169).

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APPENDIX 15.—LETTER DATED AUGUST 31, 1993, FROM HON. ANN W. RICHARDS, GOVERNOR, STATE OF TEXAS



STATE OF TEXAS  
OFFICE OF THE GOVERNOR  
AUSTIN, TEXAS 78711

ANN W. RICHARDS  
GOVERNOR

August 31, 1993

RECEIVED  
OCT 4 1993  
JUDICIARY COMMITTEE

The Honorable Jack Brooks  
U.S. House of Representatives  
2449 Rayburn Building  
Washington, D.C. 20515

Dear Representative Brooks:

The Governor's Advisory Committee on Immigration and Refugee Affairs has recently informed me of several initiatives regarding immigration reform, one of which is the creation of a commission that will have oversight of the enforcement of federal immigration laws. This commission will provide community outreach in order to build stronger positive relations between the Immigration Naturalization Service (INS) and the local community, and investigate complaints of abuse in the enforcement of immigration law.

As you know, legislation to create the Immigration Enforcement Review Commission has been introduced. In proposing to locate this federal commission in El Paso, the authors of the legislation have given Texas the opportunity to be at the forefront of evolving immigration issues and the opportunity to be home to a federal commission which will have a positive impact on our state.

We are all aware of the divisiveness surrounding immigration issues. Therefore, efforts to address these issues in a positive manner are important. This legislation does that, and I support the creation of the Immigration Enforcement Review Commission.

Sincerely,

A handwritten signature in cursive script that reads "Ann Richards".

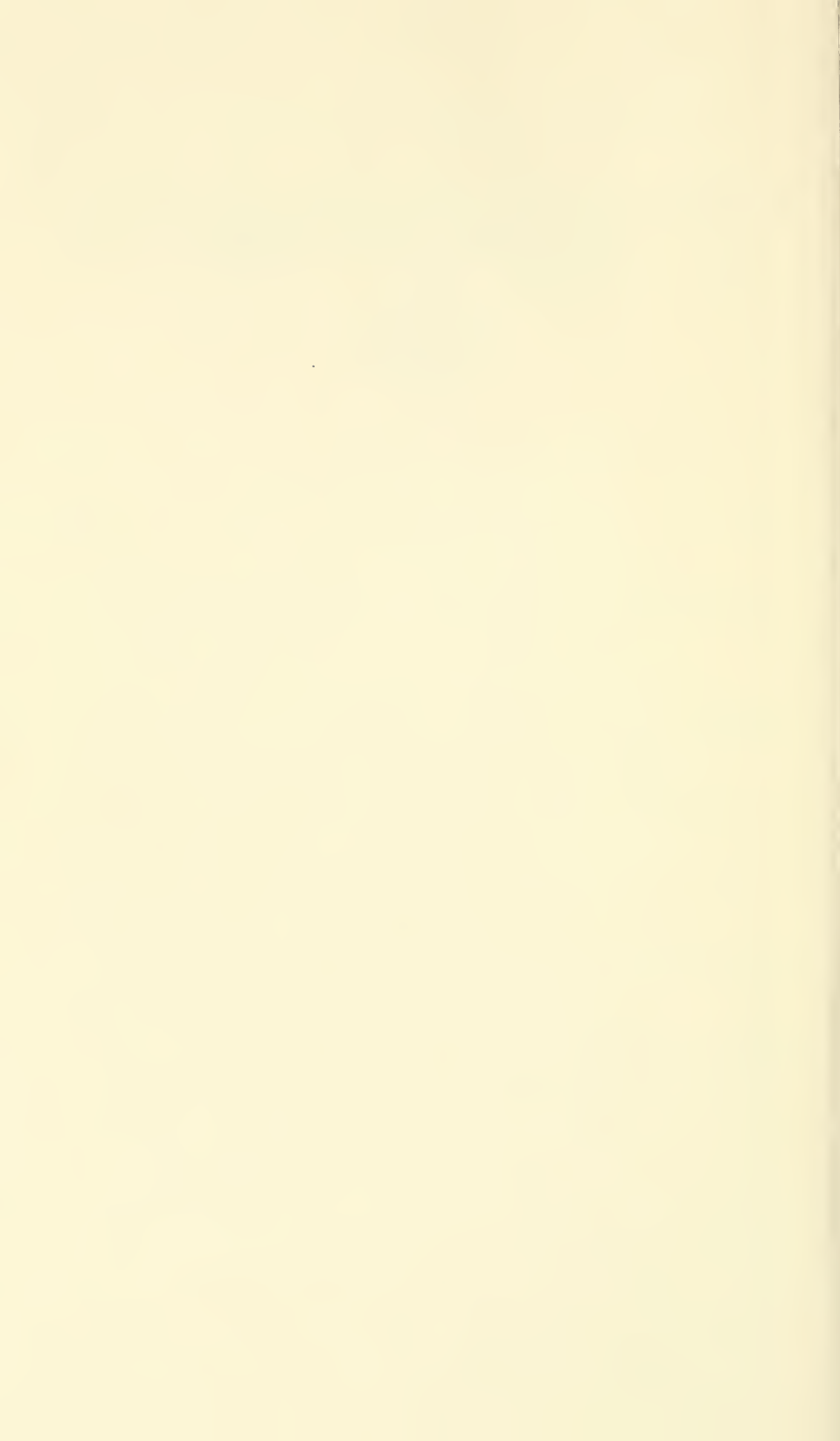
ANN W. RICHARDS  
Governor















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